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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. [redacted] 18

INTERNATIONAL BOXING CLUB OF NEW YORK, INC., a corporation of New York; INTERNATIONAL BOXING CLUB, INC., a corporation of Illinois; MADISON SQUARE GARDEN CORPORATION, a corporation of New York; JAMES D. NORRIS; and ARTHUR M. WIRTZ,

Appellants,

against

UNITED STATES OF AMERICA,

Appellee.

ON APPEAL FROM UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JURISDICTIONAL STATEMENT

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December 10, 1957.

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JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the United States District Court for the Southern District of New York granting judgment for the Appellee is incorporated in its findings of fact and conclusions of law, dated March 8, 1957, (Appendix B *infra*, pp. 1-60 as printed by the Court) and is reported at 150 F. Supp. 397. The opinion indicating the scope of the relief to be granted was delivered orally, June 24, 1957, and is reproduced from the Stenographic Minutes (S. M. 797-814) (Appendix A, pp.

1a-11a). It is not reported. The opinion denying appellants' motion for rehearing, reargument, new trial, modification of the findings of fact and conclusions of law, and amendment of the judgment pursuant to Rules 52(b) and 59(a) of the Federal Rules of Civil Procedure and General Rule 9 of the District Court, dated August 27, 1957, is printed in Appendix A, pp. 12a-13a. It is not reported.

The opinion of this Court on a prior appeal reversing a dismissal of the complaint is reported at 348 U. S. 236 (1955).

The decree appealed from, dated July 2, 1957, is reproduced in Appendix A, pp. 14a-24a.

JURISDICTION

This suit was brought under Section 4 of the Sherman Act to enjoin alleged violations of Sections 1 and 2 of that Act, in the conduct of professional championship boxing contests. The judgment of the District Court granting relief to the United States was entered on July 2, 1957 (Appendix A, pp. 14a-24a). On July 12, 1957, the appellants made a timely motion for reargument, rehearing, a new trial setting aside and amending certain findings of fact and conclusions of law and amending or setting aside the judgment herein. This was denied August 27, 1957 (Appendix A, pp. 12a-13a). The notice of appeal was filed in the District Court on October 14, 1957. The jurisdiction of this Court is conferred by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823 (15 U. S. C. 29), as amended by Section 17 of the Act of June 25, 1948, 62 Stat. 869, 989.

The following decisions sustain the jurisdiction of this Court to review the judgment on direct appeal in this case: *Schine Theatres* v. *United States*, 334 U. S. 110 (1948); *Timken Co.* v. *United States*, 341 U. S. 593 (1951).

STATUTE INVOLVED

The pertinent provisions of Sections 1, 2 and 4 of the Act of July 2, 1890, 26 Stat. 209, as amended (15 U. S. C. 1, 2 and 4), commonly known as the Sherman Act, are as follows:

> "Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * *. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, * * *.
>
> "Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, * * *.
>
> "Sec. 4. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. * * *"

QUESTIONS PRESENTED

The basic questions presented are, first, whether the appellants violated the Sherman Act between 1949 and 1953 in the conduct of professional championship boxing contests and, second, if there be liability, whether the decree is not unnecessarily punitive and in excess of that necessary to prevent future violations of law.

In detail, the questions presented are as follows:

ON THE MERITS

(1) in finding and concluding that the promotion of professional championship boxing contests constitutes a distinct, unique and relevant market for Sherman Act consideration;

(2) in finding and concluding that the defendants in the promotion of professional championship boxing contests were engaged in interstate commerce regulated by the federal antitrust laws;

(3) in finding that violations of the federal antitrust laws occurred a) in the acquisition of stock interests and other rights by some of the defendants in other promoters; b) in agreements between some of the defendants and certain prizefighters requiring their exclusive services; and c) in agreements between some of the defendants and owners of stadia or arenas for their use for professional boxing contests;

(4) in finding that all other promoters have been excluded from promoting professional championship boxing contests in arenas and stadia owned, controlled or leased by some of the defendants during the period from June, 1949, through May 15, 1953, and that such exclusion, if any, amounted to law violation;

(5) in finding that the defendants conspired to restrain and monopolize and that they did restrain and monopolize the business of promoting professional championship boxing contests and, in particular, in making the findings of fact under the headings:

"IX. The Unlawful Combination and Conspiracy";

"X. The Conspiracy Afoot"; and

"XI. The Results of Defendants' Conspiracy";

in so far as such findings Nos. 106, 107, 114, 133, 147, 149, 152-179 tend to support the District Court's ultimate conclusion of a violation of the federal antitrust laws;

(6) in refusing to make the findings of fact tendered by the defendants filed August 7, 1956, in relation to the subject matter covered in Subdivisions IX, X and XI of the Court's findings, including proposed findings Nos. 107, 116-127, 139, 144, 145, 147, 151, 152, 154, 159, 162-165, 173-175, 178-181, 197, 204 and in refusing to make proposed findings Nos. 22, 23, 25, 27, 28, 32, 35, 49, 50, 83 and 88;

(7) in finding and concluding that the defendants or any of them have violated the federal antitrust laws;

(8) in failing to receive in evidence defendants' exhibits DCC and DDD for identification;

THE DECREE

(9) even if there were liability: in rejecting evidence of and in failing to give any weight to the action of the board of directors of Madison Square Garden Corporation (taken immediately after the District Court announced its purpose to prohibit the defendants Norris and Wirtz serving as directors and officers of the corporation, and to require them to sell their stock therein) offering to give up the promotion of professional championship boxing contests rather than suffer the severance of Messrs. Norris and Wirtz as officers, directors and stockholders;

(10) in entering the judgment herein in favor of the United States and against the defendants providing for:

(i) divestiture of the stock held by the individual defendants in Madison Square Garden Corporation (and its interim trusteeing) and the dissolution of the two International Boxing Club corporations;

(ii) the compulsory leasing of the Madison Square Garden arena and the non-defendant Chicago Stadium to outsiders for the exhibition of championship boxing contests on terms to be fixed by the Court;

(iii) the restriction on the defendants as to the number of championship boxing contests which they may promote;

(iv) the regulation of the defendants' activities in the promotion of non-championship boxing contests, an area beyond the relevant market as found by the court [Final Judgment, Pars. 1(e), 3, 4, 5, 7 and 15, Appendix A, pp. 14a-24a];

(v) harsh, cruel and punitive relief, in excess of that necessary to prevent future violations of law;

(vi) defining the terms promoter and promoting contrary to the evidence;

(11) in entering the injunctive provisions listed in paragraphs 10(i), 10(ii) and 10(iii), which deprive the defendants or some of them of their property without due process of law in violation of the Fifth Amendment to the Constitution of the United States;

(12) in failing expressly to include in its judgment the following:

(i) that, in case any divestiture or separation be ordered, the defendants should have the option of:

(a) either the defendant Madison Square Garden Corporation or Chicago Stadium Corporation give up promoting professional championship boxing contests; or

(b) the defendants Norris and Wirtz divest themselves of their stock in either Madison Square Garden Corporation or Chicago Stadium Corporation; or

(c) the defendant Madison Square Garden Corporation sell the stock of its wholly-owned subsidiary, International Boxing Club of New York, Inc., to the highest bidder;

ON THE MOTION TO REHEAR, ETC.

(13) in denying the defendants' motion, pursuant to Rules 52(b) and 59(a) of the Federal Rules of Civil Procedure and General Rule 9(h) of the Rules of this Court, filed July 12, 1957, for reargument, rehearing, a new trial, setting aside and amending certain findings of fact and conclusions of law, and amending or setting aside the judgment herein, dated August 27, 1957. (Appendix A, pp. 12a-13a).

STATEMENT OF THE CASE

In 1948 there were approximately 2,000 professional boxing contests involving 20,000 boxers conducted in a large number of arenas in the United States. The District Court found approximately the same figure for 1951 which it described as a typical year (Finding 70). In 1948 the number of championship fights in the six major divisions was 11, two of which were at Madison Square Garden and two at Yankee Stadium.

A principal promoter, Mike Jacobs, or his operating company, Twentieth Century Sporting Club, was the lessee of the Madison Square Garden Arena for conducting of professional boxing, including championship contests, on Friday nights. Jacobs was desperately sick and his organization deteriorating.

The appellants Norris and Wirtz were and for many years had been substantial stockholders in Madison Square Garden. They also had controlling interests in the Chicago Stadium, the Detroit Olympia and the St. Louis Arena, and they had leased these buildings from time to time to various promoters for the conduct of professional boxing contests but apparently not for championship contests. Neither of them had promoted any championship fight for more than ten years prior to 1949.

Joe Louis was, and for many years had been, the world heavyweight championship boxer, but he no longer desired to fight. He conceived the plan of a round robin series of fights to determine his successor and negotiated contracts with the four principal contenders under which they agreed to box for his title under his promotion. These contracts were designedly assignable.

This plan was presented by Joe Louis' representative to the appellants Norris and Wirtz and they bought from Joe Louis his right to promote the proposed series of round robin elimination heavyweight prize fights. To promote them they organized the appellant International Boxing Club, Inc., an Illinois corporation, and to protect the name, a New York corporation, the appellant International Boxing Club of New York, Inc.

The District Court found that Madison Square Garden Corporation negotiated a surrender by Jacobs of his lease on the Garden and entered into an arrangement with Messrs. Norris and Wirtz whereby boxing would be promoted by both the Illinois and New York IBCs and the control of both corporations shared between the Garden, Norris and Wirtz, and Joe Louis.

For many years prior to 1949 the Friday night weekly prize fights promoted by Jacobs had been broadcast and, as the art developed, televised, first locally and then nationally, under the sponsorship of Gillette. The District Court found that from 1949 to date the appellants contracted for two weekly series of prize fights, one, the established Friday night series originating primarily from the Garden and sponsored by Gillette, and the second, a new series on Wednesday nights, originating from Chicago and many other cities, sponsored by Pabst. Most of those were non-championship contests. As a part of these series, each year approximately six championship prize fights in the various weight divisions were broadcast, some promoted by the appellants and some by others. All this was to the public benefit.

There was no proof that any putative promoter of championship boxing contests had been excluded from an opportunity to promote such a contest or prevented from securing exclusive contractual relations with prize fighters. While the appellee made much of the fact that collectively the appellants controlled Madison Square Garden, the Chicago Stadium and an arena in Detroit and St. Louis, there was abundant evidence of other arenas and stadia in those cities and a great many in other cities in the United States where championship boxing contests could be, and in fact, were promoted.

There was no evidence of any increase in admission price to the public and as a matter of fact, largely through appellants' efforts, professional boxing contests became much more widely available to the television public on both Wednesday and Friday nights, free. There was no evidence of any unfair or arbitrary dealing with prize fighters or managers.

The complaint was filed March 17, 1952, and a stipulation amending the complaint was filed January 7, 1954. In due course, upon appellants' motion, the complaint was dismissed, the District Court believing that the opinions of this

Court held that professional athletics did not come within the scope of the Sherman Act. This Court by a divided vote reversed and reinstated the complaint. 348 U. S. 236 (1955). It is of importance both on the merits and the scope of the relief that all the activities of the defendants occurred at times when they, most lawyers, and many judges, believed they were exempt from the federal antitrust laws.

The District Court after trial following remand rendered an opinion and made detailed findings of fact and conclusions of law, a printed document comprising some 60 pages (Appendix B). In it the District Court accepted appellee's contention that the relevant market was championship boxing contests. This was necessary to sustain any finding of violation of law, for if all professional prize fights be the relevant market, the activities of the appellants neither unreasonably restrained commerce in that market nor monopolized it.

Within the time suggested in the District Court's opinion both parties submitted proposed forms of judgment. Thereafter hearings were had and testimony taken with respect to the scope of relief which should be granted. This culminated in the decree of July 2, 1957, which is appealed from (App. A, pp. 14a-24a).

The relief is drastic, punitive and beyond anything heretofore authorized by the opinions of this Court. The principal excesses and errors have been outlined in the Questions Presented, *supra*, pp. 5-7.

The decree requires the appellants International Boxing Club of New York, Inc. and International Boxing Club, Inc., an Illinois corporation, to be dissolved.

The decree prohibits Messrs. Norris and Wirtz from acting as officers or directors of appellant Madison Square Garden Corporation and requires them to sell their stock in that corporation although it is undisputed that the stock had been

acquired prior to the formation of any conspiracy which the Government alleged and which the Court found, and also it is undisputed that the acquisition of the stock was in no part the result of any law violation. Pending sale the Court directed the appellants to turn their stock over to two court-appointed trustees who are to exercise all the rights of ownership except the receipt of cash dividends (minus trustees' fees) and who are directed to sell the stock if the appellants have not done so within a two-year period.

The decree, on some supposed analogy to the patent licensing cases, requires the appellant Madison Square Garden Corporation and, in effect, Chicago Stadium Corporation (which is not a defendant) to lease their respective arenas to any promoter of a championship boxing contest who desires such a lease, on terms to be fixed by the Court.

The decree limits the appellant Madison Square Garden Corporation and appellants Norris and Wirtz on the other hand, each to the conduct of two professional championship fights each year.

The decree prohibits contracts between the appellants who are permitted to survive and any prize fighter which call for exclusive services even for a short time (prohibiting even the well recognized return bout provision, which normally benefits the fighter) thus giving their competitors a substantial economic advantage.

In addition to all this, in numerous paragraphs the decree seeks also to regulate the way in which non-championship professional boxing contests may be conducted by the surviving appellants. This would constitute a regulation of a market which the appellee urged and the District Court held was not the relevant market. As to the non-championship market there was no finding, showing or even contention of any law violation. The seriousness of this extension and of the proposed elimination

of Messrs. Norris and Wirtz from ownership of stock in and participation in the management of the Garden is shown by the fact that immediately after the Court had indicated the relief it had in mind, the directors of Madison Square Garden voted that they would rather give up the promotion of all championship contests than lose the services of Messrs. Norris and Wirtz as officers and directors in connection with the Garden's activities not only in boxing but also in the other sports events of the Garden. This offer the Court rejected and held the resolution irrelevant.

THE QUESTIONS ARE SUBSTANTIAL.

This is the first case involving professional athletics to come to this Court after a trial and it raises the substantial question as to whether the decision on the pleadings extending the federal antitrust laws to professional boxing should stand. It likewise raises the question of the criteria to be employed in the determination of the so-called relevant market for antitrust purposes.

The questions raised by the scope of the decree are substantial. Certainly no case yet adjudicated by this Court has held that the civil penalty which may be imposed upon a corporation which has violated the antitrust law is corporate death.

The punitive nature of the decree is shown when it is realized that not until two years after the filing of the amended complaint could the defendants have known of any authoritative decision that the Sherman Act applied.

The divestiture ordered by the District Court of the Madison Square Garden Corporation stock held by Messrs. Norris and Wirtz far exceeds the traditional doctrine of this Court that such a divestiture will not be ordered unless the property involved has been acquired as a result of law violations.

And it is a most substantial question whether the District Court may summarily vest the exercise of ownership in Court appointed trustees who are to be compensated out of appellants' property.

The public has a substantial interest in the maintenance of professional boxing and of the two weekly televised and broadcast series of fights. It also has an interest in the various activities of Madison Square Garden, the premier sports arena in the world. That interest, of course, cannot override considerations of legality but there is a substantial question as to whether the District Court in its zeal to eliminate Messrs. Norris and Wirtz from ownership in and management of Madison Square Garden has not inflicted unnecessary injury and damages upon the public and also to the Garden in its other sports activities.

CONCLUSION

The questions presented by this appeal are substantial and of public importance. It is respectfully submitted that probable jurisdiction should be noted.

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December 10, 1957.

APPENDIX A

[797] New York, June 24, 1957;
2:00 o'clock p. m.

Hearing Resumed

The Court: Gentlemen, before the opening of the court session, I dictated to the reporters the decision I am about to render. You will have it available to you within a few moments of the conclusion of my reading it here.

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[798] Opinion Sur Form of Decree

The Court: We heretofore have found from the evidence presented at trial and concluded that the defendants engaged in a combination and conspiracy in unreasonable restraint of trade the promotion of professional championship boxing contests in violation of Section I of the Sherman Act. We further have found that the defendants have conspired to monopolize trade and commerce in the same field, thus violating Section II of the Act. Defendants also were found to have actually monopolized commerce in the professional championship boxing field which was a further violation of Section II.

We now, after full hearing of all parties and upon consideration of the evidence submitted, turn to the formulation of an appropriate decree to remedy the wrongs which were committed. The decree in a monopolization case should have three objectives:

"One, it puts an end to the combination or conspiracy when that is itself the violation.

"Two, it deprives the antitrust defendants of the benefit of their conspiracy.

"Three, it is designed to break up or render impotent a monopoly power which violates the Act."

(Schine Chain Theatres v. U. S., 334 U. S. at 128-9.)

[799] The conspiracy which we found to have existed was made effective by the concert of action of the defendants. Thus, by stock ownership and control of stock voting power, defendants dictated the election and functioning of interlocking directors and officers and of management between the Chicago and Mid-Western boxing interests—defendants Wirth and Norris—and the New York interests—Madison Square Garden.

The illegal conspiracy and monopolization was a direct and immediate purpose of this combination. There must be a dissolution of the combination which will permit the reestablishment of the competitive positions of the defendants and the entry of others into the market.

The combination still exists and continues to function in only slightly altered form. Its purposes and objectives remain unchanged. The stock ownership of IBC-NY has been transferred to Madison Square Garden Corporation. IBC-Illinois has now Chicago Stadium Corporation as its sole stockholder. Wirtz and Norris and interests allied to them still have controlling interest in Madison Square Garden and it stands undisputed that Wirtz and Norris control and direct the [800] management of Madison Square Garden and dictate its policies and boxing activities. Wirth and Norris are the sole stockholders of Chicago Stadium Corporation. Norris is the presi-

dent and a director of IBC-New York, of IBC-Illinois, of Madison Square Garden Corporation and of Chicago Stadium Corporation.

Wirtz is a director of all four corporations, and in addition, vice-president of the Board and treasurer of Madison Square Garden Corporation. Although the stock ownership of IBC-New York and IBC-Illinois has been changed, they still share the profits of championship contests as of old.

With respect to the control of television and radio rights, a mere corporate structure change has taken place. A new corporation has been formed, Teleradio Promotions, Inc., and its entire issued capital stock is owned by Chicago Stadium Corporation. To Teleradio has been given the right to sell television and radio rights in connection with the Wednesday night television series. Thus, Wirtz and Norris control Teleradio and IBC-Illinois through Chicago Stadium Corporation, and with it the Wednesday night television series, and through IBC-New York and Madison Square Garden these same combinations control the Friday night [801] series. Truman Gibson is still found as one of the liaison between New York and Chicago. He is still an employee and secretary of IBC-NY and IBC-Illinois, and is now, in addition, an employee and secretary of Teleradio Promotions, Inc.

The unlawful combination of the defendants still possesses and exercises its monopolistic control in the field of championship contests. It appears that since May 15, 1953 there have been held in the United States 37 championship contests, excluding one bantamweight contest. The defendants admit that they had promotional control over 24 of the 37 championship contests which were held or of 65 per cent of the market, but we find that the defendants were not financial strangers

to the other 13 championship contests which were held in cities other than New York and Chicago. Because the defendants are licensed by state authorities to promote only in New York and Illinois, they could not be the persons actually designated as the promoter of the 13 championship contests, but all five of the championship contests which originated in cities other than Chicago or New York on Friday nights were televised on IBC's New York Friday night television series.

[802] We find, too, that all of the 37 championship contests in this period from May 15, 1953, save only the five outdoor contests, were televised on either the defendants' Wednesday or Friday night television series, and that the profits of the sale of the telecasting rights inured to the benefit of the dedefendants.

The combination of the defendants is still in operation in violation of the law as we have heretofore found. The dissolution of the combination can only be accomplished by an immediate and complete severance of the interlocking ownership of Norris and Wirtz in Madison Square Garden. This means there must be a complete divestiture of the stockholdings of Norris and Wirtz in the Garden. The Government has established Norris and Wirtz control the Garden Corporation.

The decree will direct Norris and Wirtz to divest themselves of all of their stockholdings in the Garden. This includes all stock which they own individually or actually control through other entities.

In order not to unduly affect the market for stock, or innocent stockholders the divestitute will be accomplished in the following manner:

[803] One, Norris and Wirtz within 30 days after the entry of final judgment will resign as officers and directors of the Garden Corporation.

Two, Norris and Wirtz will be enjoined thereafter from holding any office or directorship in the Garden Corporation.

Three, Norris and Wirtz will be enjoined from voting by proxy or otherwise any stock at any meeting of the Garden Corporation stockholders, either for the election of officers or directors or for determination of any business policy of the corporation.

Four, Norris and Wirtz will be ordered to transfer all of their Garden stockholdings direct and indirect to a trustee to be named by the Court, who will be empowered and authorized to vote the stock and exercise all other incidence of ownership.

Five, Norris and Wirtz are to effect a sale or other divestiture of their ownership of Garden stock within five years from the date of the decree, which divestiture shall be subject to the approval of this Court. Upon their failure to effect such sale or divestiture within the fixed time limit, the trustee will be authorized and empowered to effect a suitable sale of the stock within the next two years after the [804] expiration of Norris's and Wirtz's time limit.

The Court's purpose here is to bring about the complete divestiture within seven years of the date of the final judgment and decree and in the meanwhile the defendants may receive and collect any dividends declared and paid on this stock.

The foregoing will effect a major step toward undoing the illegal combination found by the Court to exist. Competition for championship contests will then be possible between Madison Square Garden in New York, on the one hand, and the Chicago Stadium, Detroit Olympia and St. Louis Arena, all still owned or controlled by Wirtz and Norris or by interests allied to or associated with them on the other hand.

This, however, will not afford the full measure of relief required in this suit. The illegal monopoly of championship boxing contests was made possible by defendants because of their control of the promotion of championship fights together with their control of the principal stadia for the staging of the fights. In other words, combination between promotion and arena operation was a means by which the objects of the illegal conspiracy were accomplished.

[805] Accordingly, there must be a limitation placed on the promotional activities of these defendants with respect to championship contests. The decree will enjoin the Garden for a period of five years from promoting more than two championship boxing contests in each calendar year. Likewise, the decree will enjoin for a period of five years Wirtz and Norris from promoting more than two championship contests in each calendar year.

The Court will accept provisions in the decree with respect to this substantially as proposed by the defendants. Such provisions shall, however, incorporate and include restraints upon the defendants from hereafter interfering in any way with an independent promoter's disposition of television or radio rights to any championship contest which may be promoted by such independent promoter or from hereafter interfering in any manner with a sponsor or television network from negotiating directly with such independent promoter of championship contests to present and include them in any television or radio broadcasting series, or to the television or radio broadcasting of such contests independently of such series.

Divorcement is found to be a necessary remedy [806] in this suit because defendants through ownership and control of the principal stadia for staging championship bouts are in a position to exclude other promoters from using these stadia to promote a championship fight.

Opinion Sur Form of Decree

The Court determines that it is necessary to separate and limit promotion of championship boxing contests from the operation of the arenas where those contests are staged.

In connection with this limited divorcement which we have directed, the Court will direct the compulsory leasing of Madison Square Garden and of Chicago Stadium as long as they are owned or controlled by the defendants or any of them on a reasonable rental basis to be judicially determined upon application after refusal to fix a reasonable rental. Jurisdiction will be reserved by the Court to pass upon the reasonable rental fee should agreement not be reached on reasonable rental. The Court will incorporate in its decree to accomplish this provision substantially as proposed by the defendants.

The divorcement to be effected must be complete and irrevocable. Defendants brought the International Boxing Club of New York, Inc. and the International [807] Boxing Club-Illinois into existence as the instrumentalities by which the illegal conspiracy was carried out. The stock of IBC-New York is wholly-owned by Madison Square Garden Corporation. The stock of IBC-Illinois is owned by the Chicago Stadium Corporation. These corporations are the promotional arms of the defendants, conceived and used to enable defendants to restrain and monopolize promotion of championship boxing contests. Their assets are of but nominal value except for the goodwill attaching to their names by virtue of the conspiracy.

Both IBC corporations must be dissolved. The decree will enjoin both corporations until dissolved from functioning in the promotion of boxing contests, will declare illegal and void all existing and unexecuted contracts of either corporation for the exclusive services of any boxer and for the promotion of more than two contests in any one calendar year within the period of five years and will require dissolution of each.

The final major provision of the decree must declare illegal and void all exclusive service contracts for championship boxers or contenders as well as all [808] exclusive leases with stadia for the staging of boxing contests. By these exclusive contracts defendants preempted the championship field by requiring all championship contenders to sign up with defendants for future bouts. Likewise the exclusive leases with arenas and stadia other than those owned or controlled by the defendants permitted them to preempt the field of places for the staging of championship contests.

The relief here must be broader than the championship field because the evil to be remedied is broader. By terminating all exclusive contracts and leases and enjoining them in the future, the way will be open for those who wish and have the financial ability and otherwise meet local and state requirements to enter into the promotion of championship boxing contests. The Court will accept generally the language of the injunction against exclusive contracts as submitted by the Government in its proposed decree.

The Court desires to note that the relief to be afforded is required by the facts of this suit. Championship boxing was regarded by defendants as a business, engaged in solely for profit. For these profits defendants were bent upon a plan of monopolization to exclude all competition and leave them free to [809] reap financial gain. The extent of defendants' activities in this illegal conspiracy requires drastic affirmative action by this Court.

The relief outlined herein is designed to put an end to the conspiracy; to deprive defendants of their present position in the market, which was attained through the conspiracy; and to destroy the monopoly which they created and seek to perpetuate. Professional championship boxing contests will be

opened with television and radio broadcasting to legitimate and healthy competition.

Jurisdiction of this cause and of the parties hereto is retained by the Court for the purposes of enabling any of the parties to this judgment or any other person, firm or corporation that may hereafter become bound thereby, to apply to this Court at any time for such orders, modifications, vacations or directions as may be necessary or appropriate for the construction or carrying-out of the final judgment and for the enforcement of compliance therewith.

Judgment is to be entered herein against all defendants for all costs to be taxed in this suit. The usual provisions against extra-territorial operation of the decree permitting reasonable inspection of defendants' [809a] records by the Attorney General are to be incorporated in the degree substantially as proposed by the defendants. The decree will be settled accordingly within one week from this date.

[810] The defendants may have an exception to my ruling. Is there any other matter you desire at this time to take up with the Court?

MR. ROYALL: Your Honor, is that designed to be the decree in itself or is it to be supplemented?

THE COURT: This is designed and intended to be an expression of the Court's opinion on the necessary remedies which are to be applied in this suit. It follows a procedure that I have followed in a number of antitrust suits, and is intended to be the guide on which the decree will be fashioned.

The Government is instructed, and you may, if you wish, settle the decree on notice within one week from today. I will have no further hearings in connection with the decree unless I find it absolutely necessary, and I doubt that I will.

MR. ROYALL: Each side may file within a week from today?

THE COURT: Yes, submit it on a notice of settlement.

MR. ROYALL: Your Honor, there is only one other thing I would like to say: In the course of the argument on the last day, your Honor suggested [811] the possibility of the defendants consenting to a certain suggestion that was made to the Court, and at that time we stated that it was not our intention in advancing the proposition to consent and that we did not consent thereto; I am not certain that that might have given an impression to your Honor that we were unwilling to discuss any consent decree. I am not suggesting that there could be any discussion at this time but our view is that it has been all along, if the Government desired to discuss any consent procedure at all, we were available. I did not want to leave the impression that we have withdrawn from that position. It does not call for any action by the Court, but I merely wanted to make that announcement, to clarify it.

[812] THE COURT: My position in connection with consent decrees has always been this:

I feel consent decrees are matters to be negotiated solely between the Government and the parties defendant.

There had been some talk about negotiations, unsuccessful negotiations for a consent decree prior to the trial. The Court did not participate and did not intend and does not now intend to participate in any negotiation for a consent decree. To do so would disqualify me from passing fair and impartial judgment upon the facts as they are presented. That is one of the principal reasons why I feel that that should be left entirely to the parties to the suit, and when you brought the matter up with the resolution which was passed by the board of directors of Madison Square Garden Corporation I refused to accept it as a term of the decree because I felt that I had

no power under the law to exclude any of these defendants entirely from engaging in the promotion of professional boxing contests, that my sole power was one which might limit and control their activities in that field, and for that reason I held, and now hold, that I cannot entertain [813] any provision by which the Garden would be restrained forever from staging or promoting championship bouts unless it is done at least with the consent of that defendant.

I think that makes the Court's position plain. I hope it does.

Do both of you understand the Court's position?

MR. ELKINS: Yes.

MR. ROYALL: Yes.

THE COURT: I do not, by the position I take, preclude any of you from coming in to see me together at any time you want to. I am always glad to see you, and I want to thank counsel, I want to thank you, General, and Mr. Elkins and your associates for the cooperation that you have given me in the presentation of this case.

General, you very ably presented the arguments for your clients, and I listened to them, I weighed them, and the result that I have announced here, I hope you will take my sincere word for it, is not the result of an overnight decision; it is not the result of a hunch; it is my opinion as a result of reflection and weighing the problems. [814] If I am in error I hope there will be somebody that will remedy it on this earth.

Well, I want to thank both of you for the courtesy and cooperation you have given me throughout this hearing.

MR ELKINS: Thank you, your Honor, for all the cooperation and patience you have shown to us.

THE COURT: Thank you, gentlemen.

Opinion Denying Motion for New Trial

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff,* —*against*— INTERNATIONAL BOXING CLUB OF NEW YORK, INC., *et al.*, *Defendants.*	Civil Action No. 74-81 Before Hon. Sylvester J. Ryan, U.S.D.J.

This motion of the defendants seeks to set aside the final judgment of July 2, 1957; to set aside certain Findings of Fact and Conclusions of Law filed on March 8, 1957; to amend certain other Findings of Fact and Conclusions of Law hereto filed on March 8, 1957; to request additional and further Findings of Fact and Conclusions of Law; to take additional testimony and evidence and to enter a new judgment. It was filed by defendants on July 12, 1957.

The motion is in effect an application for a new trial; and an attempt to be heard again on the Findings of Fact and Conclusions of Law filed on March 8, 1957.

Following the filing on March 8, 1957 of the Findings of Fact and Conclusions of Law, opportunity was given to both plaintiff and defendants to submit a proposed decree and lengthy hearings were thereafter held at which evidence was taken on the remedies to be applied.

This motion comes after all hearings on remedies have long since been terminated; in the absence of obvious and

Opinion Denying Motion for New Trial

manifest error or injustice due respect for the judicial process dictates that it be denied. Defendants' remedy lies in an appeal or an application for modification as the final judgment provides.

Motion denied.

8/27/57

(s) SYLVESTER J. RYAN
U.S.D.J.

M'filmed

AUG. 30, 1957

MEMO ENDORSED

Final Judgment

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff,* v. INTERNATIONAL BOXING CLUB OF NEW YORK, INC., a corporation of New York; INTERNATIONAL BOXING CLUB, a corporation of Illinois; MADISON SQUARE GARDEN CORPORATION, a corporation of New York; JAMES D. NORRIS; and ARTHUR M. WIRTZ, *Defendants.*	Civil Action No. 74-81

This cause having been heard, and the Court having fully considered the evidence and arguments, and having filed its Opinion on Violations, Findings of Fact and Conclusions of Law, and having fully considered evidence and arguments on relief, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. As used in this Final Judgment:

(a) "Person" means any individual, partnership, firm, corporation, or any other legal entity;

(b) "Madison Square Garden" means the arena located in New York City, owned and operated by Madison Square Garden Corporation, or any arena which Madison Square

Garden Corporation may use as a replacement thereof after the destruction, sale, or permanent discontinuance of use by said Corporation of its existing arena;

(c) "Chicago Stadium" means the stadium located in Chicago, Illinois, owned and controlled by the Chicago Stadium Corporation or any stadium which Chicago Stadium Corporation may use as a replacement thereof after the destruction, sale, or permanent discontinuance of use by said Corporation of its existing stadium;

(d) "Professional championship boxing contests" means a contest between two professional boxers, the winner of which will receive recognition as the champion of a recognized weight division; and

(e) "Promote" means in respect of any professional boxing contest the acquiring of any right to participate in, share or receive the proceeds, revenue or receipts thereof, or any part of said proceeds, revenue or receipts, but this shall not include payments for the use of any arena or stadium nor shall it include payments to contestants. "Promoter" means any person who undertakes the promotion of a professional boxing contest.

2. The provisions of this Final Judgment shall be binding upon the parties to this action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

3. All contracts between any professional boxer and any of the defendants, which provide that a boxer will engage in

professional boxing contests exclusively for any of the defendants, are hereby declared to be null and void.

4. The defendants, and each of them, are restrained and enjoined from entering into, directly or indirectly, any contract, agreement, or understanding, which provides, in terms or in effect, that a boxer shall not engage in a professional boxing contest for any person other than the defendants, or any of them. Provided, however, that nothing in this Section Four (4) shall be construed to prevent the defendants, or any of them, from entering into a contract with a professional boxer providing for the promotion of a single professional boxing contest. After five (5) years from the date of entry of this Final Judgment, this provision shall not prevent the defendants, or any of them, from entering into a contract with a professional boxer providing for the promotion of a single professional boxing contest which contract may contain a provision that the contracting defendant shall have the right to promote one (1) return professional boxing contest between the same boxers within a period of not more than eight (8) months from the date of such professional boxing contest.

5. The defendants, and each of them, are restrained and enjoined from maintaining, enforcing, attempting to enforce or entering into, directly or indirectly, any contract, agreement, or understanding which provides, in terms or in effect, that the owner or operator of any arena or stadium not owned or controlled by them or any of them, shall not lease, or otherwise make available, any such arena or stadium to any person other than the defendants, or any of them, for the purpose of promoting a professional boxing contest. This provision shall not prevent the defendants, or any of them, from leasing an arena

or stadium not owned or controlled by them for the purpose of promoting any single professional boxing program contemplated to be presented on one day.

6. The defendants, and each of them, are hereby restrained and enjoined from interfering, in any manner, with the sale or disposition of the radio, television, motion picture, theatre television, or other similar rights to a professional championship boxing contest by any promoter other than the defendants.

7. The defendants, and each of them, are hereby restrained and enjoined from maintaining, enforcing, attempting to enforce, or entering into any contract, agreement, or understanding with any sponsor of a radio or television series of professional boxing contests promoted or arranged for by any of the defendants, or with any radio or television network carrying such a series, which prevents, in terms or in effect, the said sponsor or network from purchasing directly from any other promoter the broadcast or television rights to one or more professional championship boxing contests and presenting it as a part of such a television or broadcast series, or independently of such a series.

8. Within five (5) years from the date of entry of this Final Judgment, defendants James D. Norris and Arthur M. Wirtz, and each of them, are hereby ordered to sell or cause to be sold all of the capital stock of Madison Square Garden Corporation, which they, or either of them, own or control, directly or indirectly through any other person or entity. The aforesaid sale shall be made under conditions and to a person, or persons, approved by this Court.

9. Pending the sale of stock pursuant to Section Eight (8), above, defendants James D. Norris and Arthur M. Wirtz, and each of them, are hereby ordered to transfer to Hon. George Frankenthaler, 120 Broadway, New York City and Hon. Harold M. Kennedy, 26 Broadway, New York City, trustees now named and appointed by this Court, all of the capital stock of the Madison Square Garden Corporation which James D. Norris and Arthur M. Wirtz, or either of them, own or control, directly or indirectly through any other person or entity.

The said trustees shall report the amounts, stock certificate numbers and transferor of the said stock as received by them to this Court and to the Assistant Attorney General in charge of the Antitrust Division.

If the said stock is not sold by defendants James D. Norris and Arthur M. Wirtz within the period specified in Section Eight (8), above the trustees are hereby ordered and empowered to sell said stock within two years thereafter to persons not connected or affiliated in any way with defendants James D. Norris or Arthur M. Wirtz. The aforesaid sale by the trustees shall be made only after obtaining, on notice to the Assistant Attorney General in charge of the Antitrust Division and to the defendants James D. Norris and Arthur M. Wirtz, the approval of this Court as to the terms and conditions of the proposed sale. The said trustees shall after such sale by them immediately distribute the proceeds thereof pro rata to the persons entitled to receive the same.

10. The said trustees are hereby empowered and authorized to exercise all voting rights in the said stock and all rights and privileges incident to ownership thereof, except the right

to retain cash dividends, and except the right to vote on a sale of the assets or a liquidation or merger of Madison Square Garden Corporation without instructions from this Court, given after notice to the defendants and to the Assistant Attorney General in charge of the Antitrust Division. All dividends received on any share of stock held by the trustee shall immediately be distributed pro rata to the persons entitled to receive the same, except that any such dividends received by the trustee in the form of stock having the right to vote shall be retained by the trustee subject to the same terms and conditions as the other shares held hereunder.

11. The said trustees are entitled to reasonable compensation for all services rendered by them as such trustees, and also to reimbursement for any expenses incurred by them in the performance of their duties hereunder, the amounts thereof to be approved by this Court. Such compensation and expenses shall be paid out of the dividends received on, or the net proceeds realized from the disposition of, the said stock.

12. Defendants James D. Norris and Arthur M. Wirtz, and each of them, are hereby enjoined and restrained from purchasing any of the capital stock or assets of, or from obtaining any financial interest in, the Madison Square Garden Corporation.

13. Defendants James D. Norris and Arthur M. Wirtz, and each of them, are hereby restrained and enjoined from voting, by proxy or otherwise, any of the capital stock of Madison Square Garden Corporation.

14. Within thirty (30) days from the date of this Final Judgment, defendants James D. Norris and Arthur M. Wirtz,

and each of them, are hereby ordered and directed to resign as officers and/or directors of the Madison Square Garden Corporation, and are hereby restrained and enjoined from thereafter serving as directors or officers of the Madison Square Garden Corporation.

15. Defendants James D. Norris and Arthur M. Wirtz, and each of them, on the one hand, and the defendant Madison Square Garden Corporation, on the other hand, are hereby restrained and enjoined from jointly promoting any professional boxing contest and from maintaining, enforcing, attempting to enforce, or entering into, directly or indirectly, any contract, agreement, lease, or understanding between them relating to the promotion of any professional boxing contest. Nothing, however, in this Section Fifteen (15), after a period of five (5) years from the date of the entry of this Final Judgment, shall prevent or prohibit James D. Norris or Arthur M. Wirtz from leasing Madison Square Garden for the promotion of a boxing contest, or the Madison Square Garden Corporation from leasing any arena or stadium owned or controlled by James D. Norris or Arthur M. Wirtz for the same purpose.

16. For a period of five (5) years from the date of entry of this Final Judgment, the defendant Madison Square Garden Corporation is hereby restrained and enjoined from promoting, directly or indirectly, more than two professional championship boxing contests held during any period of twelve (12) consecutive months.

17. For a period of five (5) years from the date of entry of this Final Judgment, the defendants James D. Norris and Arthur M. Wirtz are hereby restrained and enjoined from

promoting, directly or indirectly, either jointly or separately, more than two professional championship boxing contests held during any period of twelve (12) consecutive months.

18. Defendant Madison Square Garden Corporation is hereby ordered to lease Madison Square Garden to any promoter duly licensed by the State of New York, who seasonably applies in writing to promote a professional championship boxing contest therein on a specific day, provided:

(a) That the amount of rental and the terms of the lease shall be fair and reasonable for the particular kind, type and quality of specific event on the specific day; and

(b) That with the application is furnished adequate security to insure the promoter's performance of the lease when and if signed; and

(c) That at the time of the application neither shall Madison Square Garden be under lease to another for the day selected by the applicant nor shall the lease applied for conflict with any well-established event which has been regularly conducted in Madison Square Garden.

In the event that any applicant shall make a bona fide offer to lease Madison Square Garden in accordance with such provisions and the parties be unable to agree on the adequacy of the security or on fair and reasonable rental or other terms or conditions, the applicant may promptly apply to this Court, on notice to the Assistant Attorney General in charge of the Antitrust Division, for the determination of adequate security and the fair and reasonable rental and other terms or conditions for the rental of Madison Square Garden on such day.

Final Judgment

19. Defendants Arthur M. Wirtz and James D. Norris, or either of them, are hereby ordered, so long as they or either of them own stock control of Chicago Stadium Corporation, to lease or cause to be leased Chicago Stadium to any promoter, duly licensed by the State of Illinois, who seasonably applies in writing to promote a professional championship boxing contest therein on a specific day, provided:

(a) That the amount of rental and the terms of the lease shall be fair and reasonable for the particular kind, type and quality of specific event on the specific day; and

(b) That with the application is furnished adequate security to insure the promoter's performance of the lease when and if signed; and

(c) That at the time of the application neither shall Chicago Stadium be under lease to another for the day selected by the applicant nor shall the lease applied for conflict with any well-established event which has been regularly conducted in Chicago Stadium.

In the event that any applicant shall make a bona fide offer to lease Chicago Stadium in accordance with such provisions and the parties be unable to agree on the adequacy of the security or on fair and reasonable rental or other terms or conditions, the applicant may promptly apply to this Court, on notice to the Assistant Attorney General in charge of the Antitrust Division, for the determination of adequate security and the fair and reasonable rental and other terms or conditions for the rental of Chicago Stadium on such day.

20. Sections 18 and 19 shall be in force for a period of five years from the date of the entry of this Final Judgment, but prior to the expiration of such five year period the Court

upon application may extend such sections in force for such further period on such conditions as the Court shall determine.

21. Defendants International Boxing Club, Inc., an Illinois corporation, and International Boxing Club of New York, Inc., a New York corporation, are hereby ordered immediately to take appropriate steps to cause their dissolution in accordance with the laws of their respective states of incorporation.

22. Pending such dissolution, defendants International Boxing Club, Inc., an Illinois corporation, and International Boxing Club of New York, Inc., a New York corporation, are hereby restrained and enjoined from promoting any professional championship boxing contest.

23. Nothing in this Final Judgment shall impose any obligation on the defendants, or any of them, to do or omit to do any act outside the United States, its territories and possessions.

24. For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any of the defendants made to the principal office of such defendant, be permitted, subject to any legally recognized privilege when determined by this Court, (a) access, during the office hours of any of the defendants, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession of or under the control of such defendant, relating to any matters contained in this Final Judgment, and (b) subject to the reasonable convenience of such defendant but without restraint or interference from such defendant, to interview officers or

employees of defendant, who may have counsel present, regarding any such matters. Information obtained by the means permitted above shall not be divulged by any representative of the Department of Justice to any person other than this Court or a duly authorized representative of the Department of Justice except in the course of legal proceedings for the purpose of securing compliance with this Final Judgment in which the United States is a party, or as otherwise required by law.

25. Jurisdiction of this cause is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof, or upon a showing by any of the parties to this suit for amendment, vacation or modification of any of the provisions hereof are in the public interest.

26. Defendants are hereby ordered to pay all costs to be taxed in this case.

Dated: New York, New York
July 2nd, 1957

s/ SYLVESTER J. RYAN
Sylvester J. Ryan
United States District Judge for the
Southern District of New York

Judgment Entered 7/2/57
Herbert A. Charlson
Clerk

United States District Court

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 74-81

UNITED STATES OF AMERICA,

Plaintiff,

—v.—

INTERNATIONAL BOXING CLUB OF NEW YORK, INC., a corporation of New York; INTERNATIONAL BOXING CLUB, a corporation of Illinois; MADISON SQUARE GARDEN CORPORATION, a corporation of New York; JAMES D. NORRIS; and ARTHUR M. WIRTZ,

Defendants.

OPINION OF SYLVESTER J. RYAN, *D.J.*

RYAN, *J.*:

This civil anti-trust suit was filed on March 17, 1952 by the United States under Section 4 of the Sherman Act (C. 647, 26 Stat. 209, 15 U. S. C. Sec. 4), as amended, to prevent and restrain violations by the defendants of Sections 1 and 2 of the Act. The amended complaint alleges, in substance, that the defendants combined and conspired in restraint of, and to monopolize, and have monopolized, interstate and foreign commerce in the promotion of professional championship boxing contests, including the sale of radio, television and motion picture rights thereto.

Defendants' motion to dismiss the complaint for lack of jurisdiction over the subject matter, i.e., for lack of interstate commerce and for failure to state a claim upon which relief can be granted, was granted on February 8, 1954. The United States appealed directly to the Supreme Court, which reversed the judgment of dismissal and remanded the suit for trial (*United States* v. *International Boxing Club of New York, Inc.*, 348 U. S. 236 (1955)). This determination was a holding that accepting the allegations of the complaint, a claim was stated entitling the Government to some form of relief and that " . . . the Government is entitled to an opportunity to prove its allegations . . ."

I note, with gratitude and appreciation, that I have had the utmost cooperation from counsel both in the pre-trial hearings and at trial. This expedited the presentation of the evidence and shortened the trial.

1.

THE ISSUES PRESENTED

The complaint alleges that the defendants, beginning in 1949, combined and conspired in restraint of and to monopolize interstate trade and foreign commerce in the promotion, exhibition, broadcasting, telecasting and motion picture production and distribution of professional championship boxing contests in the United States. The Government contends that the combination and conspiracy resulted in a monopolization, and that it consisted of a concert of action among the defendants to exclude others from the promotion and exhibition of and the sale of radio, television and motion picture rights in professional championship boxing contests in the United States.

The acts alleged to have been committed by the defendants, pursuant to the conspiracy and combination, are: (1) purchasing of promotional control of certain championships, (2) acquiring the assets of competitors, (3) acquiring the exclusive use of principal stadia and arenas, and (4) requiring each of certain contenders for a title, as a condition of being afforded an opportunity to engage in a championship contest, to enter into a contract pursuant to which the contender, if he won the contest and thereby became champion, was required to engage in title bouts only under the promotion of defendants for a period of from three to five years.

The complaint alleges that defendants have promoted, or participated in the promotion of, 80% of all championship contests presented in the United States during the period between January 1, 1949 and May 15, 1953.

The Issues Presented

Specifically, then, the complaint alleges that the trade and commerce involved in suit is the business of promoting championship boxing contests on a multi-state basis, which includes the staging of the boxing contest in a suitable arena, the sale of tickets of admission, and the negotiations and sale of rights to broadcast, televise and to make and distribute motion pictures of such contests. This, the Supreme Court has held, "constitutes 'trade or commerce among the several states' within the meaning of the Sherman Act" (*U. S.* v. *International Boxing Club, supra* p. 240). The complaint further alleges that, in addition to monies received from the sale of tickets of admission, a substantial portion of the total revenue from championship fights comes from the sale of rights involving radio, television and motion pictures.

The answers deny that defendants have unlawfully conspired or combined, or that they have, either individually or collectively, a monopoly within the meaning of the Sherman Act. The main thrust of the defense lies in the contention that championship boxing contests are not independent of and would not exist without non-championship contests and, therefore, the promotion of championship boxing contests does not constitute a relevant "market" for purposes of testing violations of Sections 1 and 2 of the Sherman Act.

The Government argues that the promotion and exhibition of, and the sale of radio, television and motion picture rights in professional championship boxing contests constitute a "market" for purposes of determining whether there were restraints of trade and monopoly as alleged. The defendants urge that the relevant market is the entire entertainment field (or, at the very least, the promotion

of all boxing contests). They contend that if the sale of radio, television and motion picture rights with respect to championship bouts have material significance, such a finding would serve only to establish that the correct and relevant market is the entire entertainment field.

The Government, charging the defendants, as it does, with having violated Sections 1 and 2 of the Act, has the burden of establishing the relevant market as well as the elements of the offense as set forth in the Act. Thus, to sustain its charge that the defendants conspired to monopolize, the Government must prove that the defendants had a specific intent to monopolize (*Swift & Co. v. United States,* 196 U. S. 375, 396 (1905)); and to establish that the conspiracy charged was successfully consummated, that the defendants did in fact monopolize the relevant market, that they were " . . . able, as a group, to exclude actual or potential competition from the field" (*American Tobacco Co. v. United States,* 328 U. S. 781, 809 (1946)).

The basic issues presented for determination as they have been framed and submitted by the defendants are:

1. Were the activities of defendants in connection with the promotion and exhibition of championship boxing contests interstate trade and commerce within the meaning of Sections 1 and 2 of the Sherman Act? and
2. If the defendants' activities were interstate trade and commerce, was Section 1 or Section 2 of the Sherman Act violated by them?

The Government called eight witnesses and introduced 268 exhibits; defendants called seven witnesses and offered 13 exhibits. On consideration of all this evidence, I make the following findings of fact.

2.

FINDINGS OF FACT

I. Description of Defendants and Others.

1. Defendant International Boxing Club of New York, Inc. (hereinafter referred to as IBC(NY)), is a New York corporation with offices and principal place of business in New York, New York. It was formed on March 14, 1949. From about July 1949 to May 15, 1953, the end of the period covered by the Amended Complaint (hereinafter referred to as Complaint), about 80% of its voting stock was substantially equally divided between defendants Wirtz and Norris and the defendant Madison Square Garden Corporation, while the remaining approximate 20% was owned by Joe Louis or Trustees for his benefit. It has been engaged in the promotion of professional boxing contests including professional world championship boxing contests. During the period July 1949 to the present it has held a license to promote boxing matches in New York issued by the New York State Athletic Commission. It is found and transacts business in this District.

2. Defendant International Boxing Club, Inc., an Illinois corporation (hereinafter referred to as IBC(Ill.)), has offices and principal place of business in Chicago, Illinois. It was formed on March 1, 1949. From about July 1949 to May 15, 1953, about 80% of its voting stock was substantially equally divided between defendants Wirtz and Norris and the defendant Madison Square Garden Corporation, while the remaining approximate 20% was owned by Joe Louis or Trustees for his benefit. It has been engaged in the promotion of professional boxing contests

including professional championship boxing contests. During the period July 1949 to the present it has held a license to promote boxing contests in Illinois issued by the Illinois State Athletic Commission.

3. Defendant Madison Square Garden Corporation (hereinafter referred to as Garden), is a New York corporation with offices and principal place of business in New York, New York. It was organized to own and operate the arena building in New York City known as Madison Square Garden which was built in 1925-6. Throughout the period covered by the Complaint, it has engaged, among other things, in the management and operation of the Madison Square Garden Arena including the promotion of various spectacles and contests held there. It is the foremost indoor sports arena in New York City and is utilized for various indoor sports events, including professional boxing contests and other events and spectacles. It is found and transacts business in this District.

4. Defendant James D. Norris, a resident of Chicago, Illinois, was president and a director of IBC(Ill.) and IBC(NY) from March 24, 1949 and July 8, 1949, respectively, and thereafter throughout the period covered by the Complaint and since. He has been a director of IBC (Mich.) since its incorporation and the president of that corporation since August 11, 1949. He has also been the president and a director of IBC(Mo.). He has been a director of the Garden since December 19, 1950, and has been its president since June 9, 1955. At all times mentioned in the Complaint he had a substantial stock interest in the Garden.

Findings of Fact

5. Defendant Arthur M. Wirtz, a resident of Chicago, Illinois, was a director of IBC(Ill.), of IBC(NY), and of the Garden from March 24, 1949, July 8, 1949, and December 19, 1950, respectively, and thereafter throughout the period covered by the Complaint and since. He has been a director of IBC(Mich.) since its incorporation; he has also been a director of IBC(Mo.) since September 26, 1950, and vice-president and secretary since January 12, 1950. At all times mentioned in the Complaint he had a substantial stock interest in the Garden.

6. The International Boxing Club, Inc., a Michigan corporation (hereinafter referred to as IBC(Mich.)), was organized under the laws of the State of Michigan on July 12, 1949 to promote professional boxing matches in Michigan. It was a wholly owned subsidiary of IBC(Ill.) until December 28, 1950, and thereafter throughout the period covered by the Complaint, it was jointly controlled by the defendants Wirtz and Norris.

7. The International Boxing Club, Inc., a Missouri corporation (hereinafter referred to as IBC(Mo.)), was organized under the laws of the State of Missouri. From October 23, 1950 and thereafter throughout the period covered by the Complaint, it was jointly controlled by defendants Wirtz and Norris.

8. The defendants Norris and Wirtz participated in the direction and management of the defendants IBC (NY), IBC (Ill.), IBC (Mich.), IBC (Mo.) and, since December 19, 1950 of the defendant Garden, and particularly in those affairs, policies, and acts of the said corporations described

more fully in these Findings of Facts. Each of the individual defendants has authorized, ordered, or done some or all of the acts hereinafter described.

II. Professional Boxing.

9. Professional boxing is a legalized sport which has become a business and which is conducted as a form of public entertainment. All who engage in it, either as boxer participants, managers or promoters are motivated to some extent by the desire of profit or monetary gain. It consists of a contest between two individuals each of whom uses his fists, bandaged, taped and encased in padded gloves, to attack his adversary with blows above the waist line and to ward off his adversary's blows. The winner is the boxer who either renders his adversary unable to continue, or failing that, receives the decision of the official judges at the end of the contest. A boxer may also win by the disqualification or default of his adversary.

10. The contest takes place on a square, covered, platform, enclosed by ropes, located in an arena to which members of the public are admitted upon presenting tickets of admission, which may be purchased at the gate.

11. The contestants are matched according to weight classes. There are eight recognized weight classes: flyweight (to 112 lbs.); bantamweight (to 118 lbs.); featherweight (to 126 lbs.); lightweight (to 135 lbs.); welterweight (to 147 lbs.); middleweight (to 160 lbs.); light heavyweight (to 175 lbs.); and heavyweight (over 175 lbs.). In the United States the two lightest classes have little practical

importance. No flyweight championship bout has been held in the United States since 1935, and no bantamweight championship has been held in the United States since 1947.

12. In each weight class there is at any one time ordinarily one recognized world champion. Recognition as a world champion is a lucrative asset to any professional boxer and attaining the world championship is generally sought by all professional boxers in the division in which they compete. It places the individual so recognized in a position to obtain more for his services than those who have not been so recognized. Contests in which these champions participate have greater box-office appeal, arouse greater public interest, have larger audience participation and bring in more revenues from sale of admission tickets, or "gate," and sale of other rights to the contest. There are other emoluments which come to the recognized world champion by way of commercial endorsements and advertising programs.

13. The champion becomes such either by defeating the existing champion in a recognized title contest, or, if the champion has retired or his title is declared vacated, by engaging with one or more recognized top contenders in a contest, or series of contests, recognized as title, or title elimination contests by authorities such as the New York State Athletic Commission and the National Boxing Association (an association of the state and municipal boxing commissioners, hereinafter referred to, from time to time, as NBA). Although there are sometimes differences of opinion as to who is the champion, such differences are infrequent. The field of champions and potential champions

is limited by reason of the prowess of the few who have gained the public recognition of those who are "fans" or followers of the contests. It is reasonable to say that, at any one time, there are at most only six or so professional boxers who can defend a world championship title.

14. A boxing contest is a single bout between two boxers. Depending upon the circumstances it may be scheduled for 4, 6, 8, 10, 12 or 15 rounds of three minutes duration with rest periods of one minute between rounds.

15. A boxing contest is not staged in an arena except as part of a program or series of boxing contests, known as a boxing card. Each boxing card includes a main event. The professional championship boxing contests are generally staged with a number of "preliminaries," minor or insignificant contests, usually five or six in number. The minor contests have little or no interest to those who attend the championship contests; they have no drawing power or box-office appeal, and are staged only that the main or championship event may be orderly presented and allow for the entrance and exit of the spectators with a minimum of confusion.

16. Promoting professional boxing contests includes negotiation and execution of contracts with the boxers, the arranging of details necessary to the exhibition of the contest, the selling of tickets of admission, the staging of the contest, and the sale, if any, of radio, television, or motion picture rights to such contests.

III. State and Municipal Regulation of Professional Boxing.

17. Professional boxing is conducted in many of the states and localities under rules and regulations of governmental authorities; in many instances under a licensing system by which control and supervision is exercised over the boxers and their managers, promoting corporations, the referees, judges, match-makers, time-keepers and those in charge of the sale and distribution of admission tickets. This governmental regulation ofttimes extends to specific proposed boxing contests and boxing cards. Under the laws of New York and Illinois, and in certain other states in which professional boxing is permitted, a promoter's license may be issued only to a corporation organized under the laws of that State.

18. In New York the governing authority is the State Athletic Commission which is a Division of the Department of State. In Illinois that authority is the State Athletic Commission.

19. In New York the boxers and their managers, promoting corporations, the referees, judges, match-makers, timekeepers, box office employees, ticket takers, trainers, and announcers, among others, must be licensed by the Commission. The proposed boxing card must be submitted to the Commission for approval by it. From time to time the Commission disapproves proposed boxing contests.

20. In New York, the rules and regulations provide, among other things, for: the filing and some of the terms of

the contracts between boxers and the promoter, and between boxers and their managers; the printing and handling of tickets; the actual conduct of the bout; the rules governing the functioning of officials, including the judges, referee, and timekeeper; the manner of scoring the contest; the classification of contestants on a weight basis; and medical examinations of the contestants. The rules and regulations in Illinois are similar and apply to the same subjects generally.

21. In New York all judges and referees must be assigned by the Commission. In any principal or main bout the contestants must be paid on a percentage basis and the licensed promoting corporation, without advance approval of the Commission, cannot pay the contestants an amount in excess of 50% of the net proceeds of the boxing program after the State tax and the compensation of the ring officials have been deducted.

22. Licensed promoting corporations are not allowed to conduct more than one program per week without the special permission of the Commission, and no such program may be called off or adjourned without the consent of the Commission.

23. It does not lie within our jurisdiction, to interfere with or attempt to modify or dictate the conditions under which those engaged in this professional boxing business shall operate on a local basis. It is our sole concern to inquire into such activities only insofar as they affect the interstate trade and commerce which has grown up and become an integral part of these activities; to that extent

our jurisdiction is limited and by that limitation our inquiry is bound.

IV. The Trade and Commerce Involved.

24. The trade and commerce involved in this suit is the promoting and holding of professional championship boxing contests and all the commercial activities, which are an important and integral part of a successful and complete operation of such business. This includes the staging of such championship boxing contests in a suitable arena or stadium; the sale of tickets of admission; the negotiation and sale of rights to broadcast and to telecast through home television consumption or closed circuit theatre television consumption; and to make and distribute motion pictures.

25. Each of these business phases of the professional championship boxing contests provides substantial sources of revenue for the promoters and participants; not the least of which are the payments received from the sale of rights involving broadcasts by radio and television and the distribution and exhibition of motion pictures of the events.

26. The efficient promotion of these professional boxing contests includes the negotiation and execution of contracts with the boxers, the arranging of details necessary to the exhibition of the contests, the selling of tickets of admission, the staging of the contests, and the sale, if any, of radio, television or motion picture rights to such contests.

V. The Interstate Character of This Trade and Commerce.

27. The defendants IBC (NY) and IBC (Ill.), in promoting professional world championship boxing contests, have made frequent use of the mails, the telephone, telegrams, cablegrams, radiograms, and their officers and agents have travelled across state lines and, in some cases, to foreign nations, to negotiate between themselves, with other promoters, and with boxers and managers. The defendant IBC (NY), in promoting championship contests, has sold a substantial number of admission tickets to professional world championship contests through the use of the mails to customers located in states other than those states in which the contests were held. A substantial number of people who purchased tickets in that manner crossed state lines to be present at such professional boxing contests.

28. Likewise, the defendants IBC (NY) and IBC (Ill.) have negotiated and executed contracts for the sale of rights to broadcast and telecast championship contests. Such negotiations have involved the frequent use of the mails, telephone and telegrams, and means of personal travel across state lines. The purchasers of such rights have broadcast and telecast, or caused to be broadcast and telecast, descriptions and views of such professional world championship boxing contests to private homes located throughout the United States and in the case of some radio broadcasts, in foreign countries.

Findings of Fact

29. The telecasting of championship contests is of such significance and importance that championship contests held outside the Eastern time zones are staged at unusual times, sometimes as early as 7 p.m. in order to be seen on television in the East at the traditional time of 10 p.m.

30. The locality in which a championship contest is presented is frequently "blacked out," i.e., the contest is not televised in such particular locality.

31. The defendants IBC (NY) and IBC (Ill.), in promoting professional world championship boxing contests, have, in some instances, negotiated and entered into contracts to sell the right to telecast professional world championship boxing contests, under which the contract purchaser agreed to arrange for the exhibition of such telecasts in motion picture theatres located in various states throughout the United States.

32. The defendants IBC (NY) and IBC (Ill.), in promoting professional world championship boxing contests, have, in some instances, negotiated and entered into contracts to sell the rights for the distribution of motion picture films of such contests, under which the contract purchaser agreed to arrange for the distribution of motion pictures of such contests for exhibition in theatres located throughout the United States and in foreign countries.

33. The thirty-six championship boxing contests which defendant promoted or had an interest in during the period June 1, 1949 through May 15, 1953, were held in the States

of New York, Illinois, Michigan, Missouri, Massachusetts, Florida, Pennsylvania, Ohio and California.

34. The defendants, as promoters of championship contests, derive substantially all of their revenue from the sale of tickets of admission and from the sale of radio, television and motion picture rights to such contests, on the occasions when such rights are sold. The sale of tickets of admission and of the radio, television and motion picture rights are in the control of the promoter.

35. The gross gate receipts plus monies received from the sale, if any, of rights to television, radio and motion pictures for the 44 professional championship boxing contests held in the United States during the period June 1, 1949 to May 15, 1953, were $8,759,326. Of that amount $6,347,594 or 72.4% was attributable to ticket sales and $2,411,740 or 27.6% was attributable to sale of said rights. In arriving at this gross receipts figure, and in making this comparison, gate receipts before payment of federal admission tax figures have been used because the price on the tickets includes such taxes.

36. The revenues derived from sales of tickets of admission to those 44 contests varied between $27,166.56 and $768,719.32.

37. The revenue derived from the sale of television, radio and motion picture rights to those 44 contests varied between $4,650 and $386,413.92 in the 29 bouts in which one or more of these rights were sold.

38. The 36 championship contests which the defendants promoted or had an interest in during the period June 1,

1949 through May 15, 1953, produced a total revenue of $7,100,944.92, of which $2,391,740.92 was derived through the sale of radio, television and motion picture rights.

39. During 1949 four championship contests promoted by the defendants, or from which defendants received income, produced total revenues of $569,859.73, of which $59,650.00 or about 10% was attributed to the sale of radio, television and motion picture rights to such contests.

40. During 1950 seven championship contests promoted by the defendants, or from which defendants received income, produced total revenues of $856,752.72, of which $215,000 or about 25% was derived from the sale of radio, television and motion picture rights.

41. During 1951 thirteen championship contests promoted by the defendants, or from which defendants received income, produced total revenues of $2,365,536.37, of which $946,531.92 or 40% was derived from the sale of radio, television and motion picture rights to such contests.

42. During 1952 nine championship contests promoted by defendants, or from which defendants received income, produced total revenues of $2,398,030.89, of which $863,558.00 or about 36% was derived from the sale of radio, television and motion picture rights to such contests.

43. The sale of television and radio broadcast rights to championship contests plays an important role in the promotion and staging of these contests, and is a matter of prime business importance. This is evidenced by the fact that the revenue from the sale of home television and

radio rights to the Maxim-Murphy light-heavyweight championship contest, promoted by IBC (NY) in the Garden on August 22, 1951, was two and a half times greater than the revenues from the gate receipts after deduction of federal admission taxes; and in the Gavilan-Graham welterweight championship bout, promoted by IBC (NY) at the Garden Arena on August 29, 1951, the revenue from the sale of home television and radio rights produced approximately twice as much revenue as the sale of tickets of admission after deduction of federal admission taxes.

44. The telecasting of championship contests is of such significance and magnitude to the promoter that the presentations of such contests in New York City have become fewer because of the fact that with so many home television receivers in the New York metropolitan area, that area cannot be blacked out without materially reducing the value of the television rights to the sponsors.

45. The business of promoting championship contests is substantially dependent upon revenue from the sale of radio and television rights thereto and that fact is responsible, in great measure, for the manner in which the business is presently conducted.

46. The revenue received by defendants through the sale of motion picture rights to six championship contests presented between June 16, 1949 and May 15, 1953 and their participation in the filming and distribution as described in Finding 33, amounted to $616,560.19.

47. The income of the defendants from such a film usually depends on the amount of revenue derived from the

distribution of the film in theatres located throughout the United States and in foreign nations.

48. The income of the defendants from the sale of rights to televise a championship contest through closed channels to moving picture theatres is based on a royalty for each seat in each theatre to which the bout may be transmitted or on the number of tickets sold to each such theatre.

49. A professional championship boxer, directly, or through his managers, negotiates with promoters on a bout-by-bout basis for a percentage of the gate receipts, plus a share of the revenue, if any, from the sale of radio, television or motion picture rights.

50. The revenues received by such boxers from the sale of radio, television and motion picture rights to the contests in which they engage represent a substantial part of the revenues received by the boxers from such contests.

VI. The Promotion of Championship Contests—a Separate Part of This Interstate Commerce.

51. The gross income from gate receipts (less federal admission taxes) and from the sale of radio and television rights, and the distribution of motion pictures from all championship bouts promoted by the defendants from June 1, 1949 to March 17, 1952, averaged, as to each bout, $154,000. The gross income, computed in the same manner, from non-championship bouts promoted by defendants at the Garden Arena, Chicago Stadium, Yankee Stadium,

and the Polo Grounds, all important stadia, between June 1, 1949 and March 17, 1952, averaged, as to each bout, $40,000.

52. The Charles-Maxim heavyweight championship bout held in the Chicago Stadium on May 30, 1951 was promoted by IBC (Ill.) and radio and home television rights to this bout were sold to Pabst Brewing Company for $100,000. However, similar rights to a non-championship heavyweight bout between these same contestants held about seven months later on December 12, 1951 were purchased by Pabst from defendant IBC (Ill.) for less than half of that price, i.e., for $35,000 in addition to a payment made on a series contract of about $10,000, or a total of $45,000.

53. The Nielsen Average Audience rating is a percentage which purports to show the number of residential television sets that were tuned in to the program expressed as a percentage of the total residential television sets, whether turned off or on, which were in areas into which the program was telecast.

54. The average "Nielsen Share of the Audience ratings" (which are generally accepted by sponsors of television programs as accurate) for the non-championship contests presented beginning September 27, 1950 through May 15, 1953 by IBC (NY), IBC (Ill.), or by any promoter in connection with either of the IBCs, and on which a "Nielsen" rating was made, is 57.7%, while the same average for championship contests presented during the same period is 74.9%.

Findings of Fact

55. The preceding Finding and the other "Nielsen" average ratings reflect that several millions more television viewers watch championship contests than watch major non-championship contests.

56. The televising of championship boxing contests has a particular demand and peculiar qualities in contradistinction to the televising of non-championship boxing contests.

57. The defendants recognized the special attractiveness and peculiar qualities incident to the promotion of championship contests, and in the agreement between Wirtz-Norris and the Garden to promote boxing contests jointly, they specifically allocated the promotion of championship contests between them.

58. The defendants expressly limited their contingent, exclusive contracts with contenders for championships to championship contests, making it clear that they were not interested in obtaining exclusive rights to the promotion of non-championship bouts.

59. The intent of the defendants to confine such exclusive agreements to only championship contests was made clear by IBC (NY) reassuring Gavilan that his exclusive agreement was to become operative only if he won his contest with the then champion and thereby became champion himself and that the contract thereafter would not relate to any boxing contest other than championship contests.

60. Sponsors of televised boxing contests recognize that the televising of a championship contest has a unique

advertising value for a sponsor in contradistinction to the televising of a non-championship contest.

61. A particular and special demand exists among radio broadcasting and telecasting companies for the rights to broadcast and telecast championship contests in contradistinction to similar rights to non-championship contests.

62. A particular and special demand exists among moving picture companies for the rights to make and distribute films of championship contests in contradistinction to similar rights to non-championship contests.

63. Although during the period June 1, 1949 through May 15, 1953 one or more of the defendants sold motion picture rights to 6 of the 44 championship contests presented, for amounts varying between $500.00 and $272,892.42 and for a total of $616,560.19, during the same period no full-length motion picture rights were sold to a non-championship contest.

64. A particular and special demand exists among promoters for championship contests in contradistinction to non-championship contests.

65. A substantial number of persons purchase tickets of admissions to attend professional championship contests who do not do so to attend non-championship contests.

66. A particular and special demand exists among spectators for championship contests in contradistinction to non-championship contests. Spectators pay substantially more for tickets of admissions to professional champion-

ship boxing contests than they pay for tickets to non-championship contests.

67. A separate, identifiable market exists for professional world championship boxing contests among boxers, spectators, sponsors of radio and television programs, owners of radio broadcasting and telecasting stations, moving picture companies, and promoters of professional boxing contests.

68. Professional boxing contests are staged or presented in arenas or stadiums.

69. A large variety of events can be and are staged, presented or held in arenas, where professional boxing contests are presented.

70. In a typical year there are about 2,000 professional boxing shows presented in arenas in the United States, of which approximately 9 to 13 are professional championship boxing contests.

71. There is a number of arenas in the United States where sporting events including boxing contests are presented in which none of the defendants has an interest.

72. The exhibition of professional championship boxing contests does constitute a market separate and distinct from the exhibition of professional boxing contests, sporting events, and other forms of public shows, spectacles and entertainment.

VII. The Sale of Television and Broadcast Rights to Championship Contests Is a Separate Part of This Interstate Commerce.

73. The fact that a professional boxing contest is a show staged for public entertainment presents those who have an immediate financial interest in the contest, including the boxers, their managers, and the promoter, with the opportunity, if purchasers are available, to sell the right to come upon the premises, with the necessary equipment, and pick-up or describe the contest for ultimate transmission to the public through various media of communication.

74. The most commonly sold rights during the period June 1, 1949 through May 15, 1953 and since, were television rights. Radio rights have been sold with television rights on a number of occasions. Theatre television rights and motion picture rights have also been sold.

75. The right to pick-up through cameras and telecast electronic reproductions of professional boxing contests, when sold, is sold to sponsors, or to advertising agencies for the account of their clients, who are sponsors, or to telecasting corporations for a resale to sponsors.

76. The sponsor is a commercial organization which uses advertising media to strengthen and increase public awareness and acceptance of its product or services.

77. Sponsors who have used the telecasting of boxing contests for advertising have, at the same time, used other advertising media. There is a large variety of shows and

events available for television advertising sponsorship. Various sponsors choose various types of television programs as the most satisfactory competitive instrument to interest the public.

78. The general market that the sponsor seeks to reach is the television viewer who is free to watch its program and other programs which are being telecast at the same time.

79. There is a separate audience for championship contests as distinguished from the sports audience that is interested in viewing non-championship contests and other sporting events regularly or from time to time.

80. It is desirable for successful television advertising that the sponsor establish in the television user a continuity of viewing habit, if at all possible.

81. Continuity of viewing habit is established by making the viewing public aware that if it turns to a particular televison channel at a particular time each week, it will see a television show of a kind and type which it will prefer to other programs available at the same time.

82. The sponsors who have purchased the television rights to the regular Friday night series of boxing contests of IBC(NY) and the regular Wednesday night series of boxing contests of IBC(Ill.), have purchased their telecasting time on a 52 week a year basis.

83. With infrequent exceptions, weekly boxing contest television shows have non-championship bouts as the main

event. All championship boxing contests held in a given year if broadcast alone would not provide continuity to a television advertising program.

84. The sponsor of a boxing contest television show program has great interest in sponsoring the televising of a world championship boxing contest but endeavors to have such contest brought within its regular weekly series of boxing shows.

85. The purpose of including championship boxing contests among those shown on a regular television series is to bolster the viewing audience, by presenting to the public a special show which appeals to an additional separate audience in the hope that it will attract the attention of that separate group to the other programs regularly broadcast.

86. The sale of television, radio, or motion picture rights to professional championship boxing contests does constitute a market separate and distinct from the sale of such rights with respect to boxing contests and other forms of public entertainment.

VIII. The Defendants' Position in the Professional Boxing Business in 1949.

87. Madison Square Garden is the foremost sports arena in New York City and is the best known arena of its kind in the United States, if not the world. It was built in 1925 and succeeded to the name and tradition of old Madison Square Garden.

Findings of Fact

88. The Garden building is located in the hotel and theatrical district of mid-town Manhattan. It contains a very large arena with an exhibition hall in the basement. The arena's seating capacity is 18,000 for boxing shows, meetings and rallies; 15,000 for basketball and hockey, and 14,000 for the circus and rodeo.

89. The Garden has the facilities for the staging of a great variety of sports events, spectacles, meetings and rallies. Approximately 500 employees are employed at the Garden on a full or part time basis of whom about 50 are engaged in promotional activities including activities relating to the promotion of boxing. It is necessary for successful operation of the Garden that it have available each year a large number of events of outstanding quality which will maintain its prestige and attract adequate publicity and patronage.

90. Continuity in scheduling events is a vital part of the operation of the Garden. Sports events, in season, are held on particular nights of the week. Sunday and Wednesday nights are hockey nights, Thursday is basketball night, and Friday boxing night. Annual events which interrupt the regular schedule are known well in advance as to season and period of interruption. This continuity is maintained so that people can become accustomed to it.

91. The net income of the Garden from all events including boxing, reached a peak in 1947 and has declined steadily since that year. The net income for the fiscal year ending May 31, 1947 was $1,246,000. The net income for the fiscal year ending May 31, 1950 was $646,000. The net income

for the fiscal year ending August 31, 1955 was $311,000. During the years 1950-1953 inclusive, IBC(NY) operated at a loss; in 1954 its net income was $37,000 and in 1955, $32,000.

92. Television was a major factor which accounted for the Garden's decline in income in the period 1947-1955. The advent of television affected unfavorably the gate receipts at the Garden as, indeed, it has many other forms of public entertainment. The Garden was able to offset this loss in patronage, to some extent, by the sale of television rights. This income began in 1947 and 1948 and reached a peak in 1952.

93. In 1935 Norris and Wirtz first acquired their interests in Chicago Stadium. The Stadium was completed in 1929 and has a seating capacity slightly larger than that of the Garden. The problem of getting profitable events into the Stadium is similar to the problem of getting such events for the Garden except that it has to finance a greater percentage of its attractions than the Garden. The entertainment provided by television as with the Garden has adversely affected the Stadium operation.

94. In 1933 Norris and Wirtz first acquired their interests in the Detroit Olympia which has a seating capacity of 12,000-14,000. Its operations are somewhat similar to the Garden but on a substantially reduced scale. It has about one-third as many bookings as the Garden, including hockey and ice shows and an occasional boxing match. Since 1954 Wirtz has had no stock interest in the Detroit Olympia.

95. In 1946 Norris and Wirtz first acquired their interests in the property of which the St. Louis Arena is a part. The property comprises 70 acres of ground on which there is the Arena, an amusement park, and two industrial buildings. The Arena operation is secondary in this acquisition. The Arena has seating capacity of 14,000 or 15,000. It is not profitable. There are not over six boxing shows a year there. The Arena has not more than 30 or 35 dates a year of any kind.

96. For many years prior to April 1949, the Garden had been in effect a partner of the promoter, Michael S. Jacobs, and of his corporation Twentieth Century Sporting Club, Inc. (hereinafter referred to as Twentieth Century), in the promotion of professional championship, as well as non-title boxing contests, and the Garden had shared in the profits of those promotions on a 50-50 basis.

97. During the period from 1937 to 1949 Jacobs through Twentieth Century promoted professional boxing contests, including a number of championship boxing matches, in the Garden Arena.

98. In 1946 the Garden had extended its existing agreement leasing its arena exclusively to Jacobs and Twentieth Century for boxing contests, and such agreement was effective in accordance with its terms until May 31, 1951.

99. Jacobs in early 1947 suffered a severe illness, and thereafter the Garden's income from boxing declined. Jacobs was unable thereafter to take personal and active charge of the management and direction of Twentieth Century. Jacobs spent much time in Florida in 1948 and in

January 1949 cut the salaries of his staff at Twentieth Century.

100. By January 1949, the defendants Wirtz and Norris for many years had, among their varied business enterprises, been engaged in the operation of the following indoor arenas: Chicago Stadium, Detroit Olympia, and St. Louis Arena, all of which were then owned and controlled by them jointly with Norris' father, James Norris. The investments of Wirtz, Norris and Norris' father in these arenas amounted to more than ten million dollars.

101. From time to time, prior to January 1949, corporations owned by Wirtz and Norris had been associated with the promotion of an occasional professional boxing contest for exhibition in one of the said arenas. Prior to January, 1949 Wirtz and Norris had also rented the Chicago Stadium from time to time to persons who wished to promote professional boxing contests. The results of these ventures had not been successful and comparatively few boxing contests had been staged there.

102. In January 1949 and prior thereto, defendants Wirtz and Norris directly and indirectly owned more than 50,000 shares of the stock of Madison Square Garden Corporation.

103. In 1948 Wirtz had been informed that the Columbia Broadcasting System was prepared to lose a substantial sum of money in order to obtain control of boxing television, and Wirtz and Norris were concerned that television companies might control the broadcasting of boxing events

to the detriment of the indoor arenas in which they were interested.

104. In and after 1948 Wirtz and Norris were also aware of the increasing difficulties of the Garden, in connection with its boxing events, resulting from the impairment of Jacobs' health.

105. Prior to January 1949, Wirtz and Norris had, on several occasions, proposed in general terms to the Garden management a working program. The Garden management, however, refused to discuss such proposals because of the Garden's long term commitment to Jacobs.

IX. The Unlawful Combination and Conspiracy.

a. *The defendants combine and conspire.*

106. In 1948, Joe Louis Barrow (hereafter Joe Louis), was the Heavyweight champion of the world. He began to make plans for his retirement from the field and in this he was counselled and advised by Truman K. Gibson, Jr. and Harry Mendel. It was part of the plan ultimately formulated by Gibson that Louis, on his retirement as Heavyweight champion, should endeavor to obtain a continuing financial interest and source of income by the formation of an organization which would promote future professional championship boxing contests. It was further contemplated that the success and continuity of operation of this organization should be achieved by obtaining exclusive options on the professional championship boxing engagements of all reasonably qualified contenders for the

title Louis held. To accomplish this, Gibson and Mendel approached Norris to discuss the matter generally. At Norris' suggestion, they later met with Wirtz in Chicago. This occurred in January 1949.

107. In about late January of 1949, Wirtz and Norris entered into an agreement with Louis, then Heavyweight Champion of the World, under which—

(a) Joe Louis or his practically wholly-owned company Joe Louis Enterprises, Inc. (hereinafter referred to as Enterprises) agreed to sign the four leading heavyweight contenders to agreements which would vest in Louis, or his assignee, the exclusive right to promote their professional boxing matches, and all radio, television, and motion picture rights to such contracts.

(b) Joe Louis would then resign as Heavyweight Champion.

(c) Joe Louis would assign the four exclusive contracts to a corporation to be formed by Wirtz and Norris for the purpose of promoting professional boxing matches.

(d) Joe Louis would be employed by this corporation, at a salary of $15,000 a year and would receive $150,000 and part of the stock in the promoting corporation to be formed by Wirtz and Norris, for assigning the exclusive contracts with the said contenders and resigning as Heavyweight Champion.

(e) The said contenders were to engage in contests to determine, with approval of the National Boxing Association, the new Heavyweight Champion.

108. A condition precedent to consummation of this agreement and to the $150,000 obligation of Wirtz and

Norris was that the National Boxing Association recognize the winner of the first contest engaged in by the said contenders as the new Heavyweight Champion of the World.

109. In or about February 1949, Enterprises entered into contracts with the four contenders Ezzard Charles, Joe Walcott, Lee Savold and Gus Lesnevich.

110. Each of the four contracts provided, in substance, that the boxer concerned would render services as a professional boxer exclusively to Enterprises or its assignee and would not during the term of the contract engage in any professional boxing contest or boxing exhibition for others without the consent of Enterprises; that, subject to the approval of the boxer concerned or his manager and to the approval of the athletic commission or governing body of boxing of the state, county, city or place where any such boxing contest was held, each opponent of the boxer in all of his contests and exhibitions would be designated by Enterprises or its assignee; that the boxer concerned would receive for his services in each contest engaged in under the agreement a percentage of the gate receipts not less than 25% and not less than 25% of any revenue from the sale of motion picture, radio, or television rights to such contest, if such rights were sold; that Enterprises would stage and conduct all boxing contests and exhibitions in which the boxer concerned should be matched during the term of the agreement, the time and place of each such contest or exhibition to be fixed by Enterprises subject to the approval of the boxer or his manager; that Enterprises guaranteed that the earnings of the boxer concerned during the term of the agreement would be at least $5,000

per year; that Enterprises would have the exclusive radio, television and motion picture rights to all contests of the boxer concerned during the term of the agreement; that the term of each agreement was for a period of two years from February 14, 1949, subject to an option to renew the contract for a period of two years and for further two year periods thereafter on the expiration of that term to which the agreement might be extended; and, the four contracts taken together provided for three specific boxing contests between the four boxers concerned, each boxer agreeing especially to engage in such match and Enterprises agreeing to stage and conduct each such match, provided that each such match should receive the National Boxing Association's designation as a contest for the world heavyweight championship.

111. On March 1, 1949, Joe Louis resigned his title as heavyweight champion of the world, and the National Boxing Association announced that it had approved the plans offered by Louis and had agreed to recognize the winner of the first elimination contest between contenders Charles and Walcott as the new heavyweight champion of the world provided that Savold and Lesnevich should each have an opportunity to fight for the title within a reasonable time thereafter.

112. Wirtz and Norris, as a result of the agreement described in Finding 107 and the execution thereof, caused IBC(Ill.) to be organized on March 1, 1949 for the purpose of promoting professional boxing contests in Illinois.

113. On or about March 24, 1949, Enterprises assigned its exclusive contracts with Charles, Walcott, Savold and

Lesnevich to IBC(Ill.) and received, in pursuance of the agreement with Wirtz and Norris $150,000.

114. On March 24, 1949, at a Board of Directors meeting of IBC(Ill.) plans were made for the promotion of championship boxing contests in Michigan and Missouri. Thereafter, on July 12, 1949 Wirtz and Norris caused the formation of the International Boxing Club, Inc., a Michigan corporation, and on October 23, 1950, caused the name of an existing Missouri corporation to be changed to International Boxing Club, Inc., for the purpose of promoting championship boxing contests as well as other boxing contests in those States.

115. In order to promote championship contests in New York, Wirtz and Norris caused the formation of IBC (NY) on March 14, 1949.

116. As the result of the consummation of their agreement with Joe Louis, Norris and Wirtz in March 1949 were in a position to promote boxing contests in which the heavyweight championship title would be at stake.

b. ***The Garden joins the combination and conspiracy.***

117. During a twelve-year period, from 1937 through 1948, about 45% of all championship contests presented in the United States were held in New York City and, of these, about 75% were held in the Garden Arena.

118. The existence and operation in 1948 and through March 1949 of Tournament of Champions, Inc. (a promoter of professional boxing contests of which the Co-

lumbia Broadcasting System, an operator of a radio and television network, was part owner) caused Wirtz and Norris to be concerned about CBS obtaining control of championship boxing matches.

119. In 1948 both Wirtz and Norris conferred with John R. Kilpatrick, then president of the Garden, and suggested a joint program between them that would prohibit Columbia Broadcasting System from obtaining control of the promotion of championship boxing contests. A few months thereafter a representative of Wirtz stated to an officer of the Garden that the televising of a championship contest from the Garden in early 1949 had seriously affected attendance at professional boxing contests presented by Wirtz and Norris in their arenas in Chicago and Detroit.

120. Shortly after the arrangements between Wirtz-Norris and Joe Louis were made, Wirtz proposed by letter of March 13, 1949 to the Garden that he and Norris, and the Garden "should work together now and keep the events for our buildings and not create a competitive situation that would be harmful to all."

121. It was arranged that Jacobs should come from Florida to discuss with the Garden management a possible termination of his lease, and on April 5, 1949, the Garden received Jacobs' consent to enter into discussions with Norris and Wirtz.

122. In mid-April 1949, Wirtz and Norris and the Garden negotiated regarding their jointly owning corporations to conduct boxing contests in their respective arenas and

outdoors. Thereafter, Wirtz and Norris, and the Garden, on or about May 5, 1949 arrived at an agreement to combine and join forces.

123. Pursuant to this agreement, common boards of directors, consisting of Wirtz, Norris, Louis, Kilpatrick, and Irish an official of the Garden, were designated for both IBC (NY) and IBC (Ill.). The personnel of these boards of directors remained the same from about July 1949 and thereafter throughout the period covered by the complaint, except that Joe Louis was replaced by Truman K. Gibson, a trustee for his benefit, in about August 1950.

124. Prior to this agreement, Wirtz and Norris, through their promoting corporation IBC (Ill.), were in a position to compete with the Garden in the promotion of championship contests.

125. The terms of this agreement included the following:

(a) Wirtz and Norris would be entitled to 80% of the profits of IBC (Ill.); the Garden would be entitled to 80% of the profits from IBC (NY); and Joe Louis would be entitled to 20% of the profits from each;

(b) Championship contests would be allocated between the IBCs—two-thirds of them to IBC (NY) and one-third to IBC (Ill.); and

(c) Garden would contribute to the venture an amount substantially equal to the payment by Wirtz and Norris of $150,000 to Joe Louis for the assignment of the exclusive contracts which Louis had obtained from Charles and Walcott.

126. A prerequisite to the Garden joining in the agreement with Wirtz and Norris was that it obtain a cancella-

tion of its lease to Jacobs and Twentieth Century, and on May 5, 1949 the Garden entered into an agreement with Jacobs and Twentieth Century, under which it agreed to pay $100,000 to Jacobs or his estate, over a period of five years for the cancellation of the lease held by Jacobs and Twentieth Century on the Garden Arena, which agreement was subsequently formalized on May 27, 1949.

127. One of the purposes of the defendants in the making of these agreements was to acquire and retain for the defendants' joint control of the promotion of championship contests and to exclude others, particularly telecasting companies, from promoting championship contests.

X. The Conspiracy Afoot.

a. *Elimination of competitors.*

128. Aside from any of the defendants, the only significant promoters of professional championship boxing contests in the United States existing in early 1949 were Michael S. Jacobs and a corporation with which he was associated, Twentieth Century; and Tournament of Champions and its wholly-owned subsidiary, Sporting Events, Inc.

1. Michael S. Jacobs and Twentieth Century Sporting Club, Inc.

129. In addition to the lease arrangement with the Garden, Jacobs and Twentieth Century in May, 1949 had exclusive leases on the Yankee Stadium and St. Nicholas Arena for the presentation of professional boxing contests.

These leases were for terms expiring on December 31, 1950 and September 14, 1949, respectively.

130. Jacobs and Twentieth Century also were parties to a contract for the exclusive services in title contests of the then Welterweight Champion, Ray Robinson.

131. On May 5, 1949, for a consideration of $10,000, Jacobs and Twentieth Century agreed on or before June 1, 1949 to assign to the Garden the exclusive leases for professional boxing in the Yankee Stadium and St. Nicholas Arena, to sell to the Garden his aluminum ring and other equipment for outdoor bouts, and to assign or make available the contract between Jacobs and the Welterweight Champion Robinson, and any other contracts with professional boxers or leases for professional boxing sites as the Garden might request.

132. In this same agreement Jacobs and Twentieth Century agreed that for a period of ten years neither of them would engage in the promotion of any professional boxing matches in the United States, nor at any time thereafter cause or permit or consent to the use of the name of Michael S. Jacobs or Twentieth Century in connection with professional boxing matches without the written consent of Garden.

133. Jacobs and Twentieth Century were thus eliminated as competitors in the promotion of championship contests. The agreements between the defendant Garden and Jacobs and Twentieth Century were made for the purpose of eliminating competition in the promotion of champion-

ship boxing contests and did substantially lessen competition in the promotion of championship boxing contests.

2. Tournament of Champions, Inc., Sporting Events, Inc., and Columbia Broadcasting System.

134. Tournament of Champions, Inc., was formed on December 29, 1947, as a New Jersey corporation, and was licensed to promote boxing in New Jersey. In 1948, a New York affiliate of Tournament of Champions, ultimately named Sporting Events, Inc., was licensed to promote boxing matches in New York.

135. TofC promoted two championship contests in New Jersey prior to October 1948 and sold moving picture rights to one of them for $25,000 and to the other for $22,500, and sold radio rights to each for $45,000, but it had lost over $30,000 on these promotions.

136. On November 26, 1948 Columbia Broadcasting System, Inc. (CBS), Management Corporation of America (MCA) and Allied Syndicates, Inc. each invested $25,000 to obtain a 25% stock interest in TofC. Thereafter until May 27, 1949, these three corporations, together with George Kletz, whose stock interest was also 25%, remained the owners of TofC.

137. The principal business and business experience of Kletz had been and remained in plastics manufacturing. The principal business and business experience of CBS had been and remained the operation of a radio and television network. The principal business and business experience of Allied Syndicates had been and remained in the field of public relations.

138. The purpose of Columbia Broadcasting System, in purchasing an interest in the TofC, was to obtain radio and television rights to a series of weekly boxing contests and to good fights including championship contests.

139. On March 15, 1949, TofC obtained an exclusive lease on the Polo Grounds in New York City for the promotion of boxing contests for a term expiring on July 1, 1950.

140. For some months prior to March 15, 1949 the TofC had an agreement with the then Middleweight Champion, Cerdan, giving it the right to promote his next two middleweight championship contests.

141. TofC shortly after March 15, 1949 began negotiations to stage two championship contests at the Polo Grounds during the Summer of 1949. TofC intended that one of these bouts would be between Sugar Ray Robinson, the then welterweight champion and Kid Gavilan. On April 7, 1949, Kletz secured Robinson's signature to a contract for such a contest although Robinson at that time had an exclusive service contract with Jacobs. Kletz was unable to get Gavilan to agree to this contest and on May 8, he asked Robinson's manager to accept another opponent. Robinson's manager asked that the proposed bout be called off. TofC intended that the other of these bouts would be between Cerdan and Tony Zale, but by May 9, 1949 had been unable to complete arrangements for the bout.

142. Wirtz, Norris and Garden, in April 1949, recognized the threat of Tournament of Champions as a competitor in the promotion of professional championship boxing contests.

143. TofC had sustained increasing financial losses in its operations. By April 7, 1949 MCA had indicated to CBS that it was interested in getting out of TofC. Kletz had earlier indicated his discouragement with the enterprise and had resigned as president and director on January 14, 1949. On April 7, 1949 Lawrence Lowman, the CBS executive closest to the operation of TofC, suggested to the President of CBS that CBS should consider getting out of TofC. Thereafter, Lowman began negotiations with the Garden looking toward the sale of the assets of TofC.

144. These negotiations were carried on and in accordance with an understanding reached with Wirtz and Norris, on May 27, 1949, the Garden, acting for IBC(NY), purchased from CBS, MCA, Allied Syndicates and Kletz all the stock and certain notes of TofC for $100,000 and 25% of the net profits of the next two middleweight championship contests promoted by the IBCs or those associated with them.

145. In connection with the purchase of TofC, the Garden entered into a separate agreement with CBS in which the Garden agreed that CBS, for a term of 5 years beginning June 1, 1949, should have a right of first refusal of the purchase of radio and television rights to a series of boxing contests to be presented weekly on a night other than Friday from September to May of each year during the term of the agreement and should also have a right of first refusal of the purchase of radio and television rights to 50% of all outdoor boxing contests and indoor boxing contests not presented as part of a weekly series during such term. The Garden was not obligated either to promote any such contests or to sell such rights, and CBS

was required to exercise its rights of refusal within a reasonable time after the rights to each annual series or single contest, as the case might be, had been offered to it. In return CBS agreed that it would not, during the five year term of the agreement, invest in any professional boxing matches or in the promotion or staging thereof, or have any proprietary interest therein, except with the Garden's consent. The agreement did not bar CBS from purchasing television or radio rights to boxing contests not promoted by the defendants nor did it require CBS to purchase such rights from the defendants.

146. CBS broadcast an annual series of boxing contests promoted on Wednesday nights by the defendants up to 1955 and at that time CBS discontinued its broadcasting of boxing.

147. The defendants' purchase of TofC's stock and indebtedness from Kletz, CBS, MCA and Allied Syndicates was made with the intent of, and for the purpose of, eliminating competition in the promotion of professional boxing contests and did result in substantial lessening of such competition. As a result of the acquisition of the assets of Tournament of Champions and the procurement of the agreement not to compete from Columbia Broadcasting System, both of them were eliminated as competitors in the promotion of championship contests.

b. *Defendants' control of important stadia and arenas.*

148. For many years prior to 1949, and during the complaint period defendants Wirtz and Norris were in effect proprietors of and controlled the Chicago Stadium, the

St. Louis Arena, and the Detroit Olympia, and defendant Garden owned and controlled Madison Square Garden.

149. One reason which prompted the Garden to join with Wirtz and Norris in promoting boxing contests was the importance of the arenas controlled by Wirtz and Norris.

150. On September 1, 1949, IBC(NY), lessee, and St. Nicholas Sports Center, Inc., lessor, entered into a lease for a term commencing September 15, 1949 and ending September 14, 1950 under which IBC(NY) was granted use of St. Nicholas Arena for at least 42 nights during that year for professional boxing matches and the exclusive right to conduct such matches at the said Arena during the term of lease. In 1950, 1951 and 1952 similar leases for one year terms were thereafter entered into between IBC(NY) and St. Nicholas Sports Center, Inc. for the years 1950-1951, 1951-1952 and 1952-1953.

151. On July 15, 1949, IBC(NY), lessee, and the New York Yankees, Inc., the owners of the Yankee Stadium and National Exhibition Company, the owners of the Polo Grounds, lessors, entered into a lease under which IBC (NY) was licensed to use those arenas for not more than 4 professional boxing matches a year and was granted the exclusive right to hold boxing matches at those arenas during the term of the lease. The term of the lease commenced January 1, 1950 and ended December 31, 1952.

152. The City of New York has the largest concentration of population in the United States. It is the most important site in the United States for the staging of championship boxing contests.

153. The City of Chicago, Illinois, in which the Chicago Stadium is located, has the second largest concentration of population in the United States and Detroit, Michigan, and St. Louis, Missouri, respective sites of the Detroit Olympia Arena, and the St. Louis Arena, also have large concentrations of population. These arenas are also important sites of championship contests.

154. St. Nicholas Arena is the only indoor arena other than the Garden in New York City which was used for the promotion of a championship boxing contest during the period from 1937-1948.

155. The Yankee Stadium and the Polo Grounds are the most suitable outdoor stadia for the presentation of professional championship boxing in the United States.

156. Fifty percent of all championship contests held in the United States from 1937 to 1948, inclusive, were held in the Garden Arena, Yankee Stadium, Polo Grounds, St. Nicholas Arena, Chicago Stadium, Detroit Olympia, and St. Louis Arena.

157. During the period from January 1, 1937 to 1948, inclusive, forty-five percent of all of the championship contests presented in the United States were held in New York City, and, of these, seventy-five percent of them were held in the Garden Arena. Of the remaining bouts held in New York City, all were held at the Yankee Stadium, St. Nicholas Arena, and Polo Grounds, with but a single exception.

158. Beginning in about May 1949 and continuing throughout the period covered by the Complaint, the de-

fendants had control of the Garden Arena, Yankee Stadium, Polo Grounds, St. Nicholas Arena, the Chicago Stadium, the Detroit Olympia, and the St. Louis Arena, which are key stadia and arenas for the presentation of championship boxing contests in the United States.

159. The defendants in March 1949 considered that the pooling of these stadia and arenas would be instrumental and effective in excluding other promoters from the promotion of championship contests.

160. As a result of the control exercised by the defendants over their own arenas and the exclusive leases of other arenas and stadia, all other promoters have been excluded from promoting championship boxing contests in said arenas and stadia during the period June 1949 through May 15, 1953.

c. Defendants' exclusive contracts with contenders for championship.

161. A term of the agreement between defendants was that they would require from each contender in a championship contest, over which defendants had promotional control or had an exclusive contract with the existing champion, a contract providing that, if he won and thereby became champion, he would engage in championship contests for a period of three, or sometimes five, years, solely under the promotion of one of the defendant IBCs or its designees. This term of the agreement between defendants was effectuated and consistently followed by them in the vast majority of instances.

162. The contingent, exclusive contracts between the defendants and a contender provided that if he won a championship title in a specific contest which IBC(NY) or IBC (Ill.) planned to promote or to have promoted between such contender and the champion, the contender would be employed exclusively by the defendants in all his matches, or in all matches in defense of his title, for a period of 3 years. Subject to the approval of the boxer and his manager and to that of the local boxing commission concerned, the employer was to select the boxer's opponents. The right to dispose of radio, television and motion picture rights was given exclusively to the defendants. A minimum annual compensation was guaranteed to the boxer.

163. These contracts were obtained by defendants from the contender as a condition precedent to such contender having the opportunity to win a title by engaging in a championship contest.

164. The defendants' practice of so obtaining such contingent, exclusive contracts from the contenders served as a device for perpetuating their control of professional world championship contests as the title passed from one boxer to another.

165. From time to time, IBC(NY) and IBC(Ill.) have made advances and loans to professional boxers and their managers. Such advances and loans outstanding at any one time have amounted to approximately $39,000 for IBC (NY) and about the same amount for IBC(Ill.). Such advances and loans are sought by the boxers and managers

to meet financial emergencies, to pay taxes and hospital bills, to pay training expenses in advance of boxing contests and for related purposes, and they are made by the defendants.

166. There is no evidence that such advances or loans were used by the defendants to exert economic pressure on any boxer or manager.

XI. The Results of Defendants' Conspiracy.

167. The intent of the defendants and the necessary result of their activities during the period covered by the Complaint as set forth in these Findings, including their acquisition of the contracts with the four heavyweight contenders from Joe Louis; their elimination from the promotion of championship contests of Jacobs, Twentieth Century, Tournament of Champions and Columbia Broadcasting System; their control of key stadia and arenas for the presentation of boxing contests and their procurement of the exclusive contracts with champions and contenders in championship contests, was to combine in order to obtain control of, and exclude others from, the promotion of championship boxing contests in the United States.

168. The defendants, as a result of their activities acquired power, during the period covered by the Complaint, to exclude competitors from the promotion of championship contests in the United States.

169. Beginning June 16, 1949, the date of the first championship contest promoted by defendants through May

15, 1953, the end of the period covered by the complaint, there were 44 professional championship boxing contests promoted in the United States. The defendants promoted 25 of the said 44 professional world's championship bouts.

170. As to 11 of the other 19 championship contests, viz:

Charles-Valentino of October 1949
Charles-Beshore of August 1950
Charles-Barone of December 1950
Walcott-Charles of July 1951
Carter-Aragon of November 1951
Gavilan-Dykes of February 1952
Salas-Carter of May 1952
Walcott-Charles of June 1952
Gavilan-Turner of July 1952
Marciano-Walcott of September 1952
Carter-Collins of April 1953

one of the defendants had an agreement in effect at the time of each such contest with the Champion involved, which required the Champion to engage in world championship contests only under the promotion of a defendant or its designee.

171. As to each championship contest referred to in Finding 170, the contender, prior to engaging in such contest, executed an agreement which provided that if he won, and thereby became Champion, he would engage in world championship contests only under the promotion of a defendant or its designee.

172. One or more of the defendants received revenue from the promotion of all but one of the contests referred to in Finding 170. As to this single exception, the defen-

dant IBC(NY) permitted another promoter, Dewey Michaels of Buffalo, New York, to promote the contest on the condition, however, that the said Michaels pay 5% of all monies received from the sale of tickets, and radio, television, and motion picture rights, if any, to IBC(NY), and this defendant made a strong effort to collect the said 5%. Because of the refusal of the said promoter Michaels to pay 5% of all monies received to IBC(NY), this defendant threatened not to permit Michaels to promote any other contest over which it had promotional control.

173. One or more of the defendants had control of the promotion of each of the eleven championship contests referred to in Finding 170.

174. Of the 44 professional championship contests presented in the United States between June 16, 1949, the date of the first championship contest promoted by defendants, and May 15, 1953, the defendants promoted, or controlled the promotion of 36, or approximately 81% of them.

175. The defendants exercised this promotional control by either promoting the contests themselves or by permitting another promoter to do so in consideration of one or more of the defendants receiving part of the revenue from the promotion of such contests.

176. From January 1951, eighteen months after the defendants promoted their first championship contest, to May 15, 1953, the end of the period covered by the Complaint, 27 championship contests were presented in the United States, and as to 25 of such contests, or about 93% of them, the defendants controlled the promotion of them,

and either promoted or participated in the revenues from the promotion of them.

177. The defendants did by their concert of action and agreement intend to, and did in fact exclude others from the promotion of, exhibition of, or sale of television, radio and motion picture rights to, professional championship boxing contests.

178. The defendants did combine and conspire to acquire and secure and did in fact acquire and secure unto themselves the power to exclude others from the promotion of, exhibition of, or sale of television, radio and motion picture rights to, professional championship boxing contests.

179. The contracts, agreements, and understandings of and between the defendants with respect to the promotion, exhibition or sale of television, radio, and motion picture rights to championship boxing contests have unreasonably restrained trade or commerce.

With these findings made, we come to consideration of the Conclusions of Law to be drawn from them.

3.

THE LAW APPLICABLE TO THE FINDINGS OF FACT

The defendants argue that (1) the promotion of championship boxing contests does not constitute the "relevant market" for purposes of determining monopoly power; (2) they have not in fact combined and conspired in restraint of or to monopolize, trade in violation of Sections 1 and 2 of the Sherman Act; and (3) their activities are not in interstate trade or commerce.

Defendants' first point relating to the relevant market is predicated almost exclusively on the recent decision in *United States* v. *E. I. DuPont de Nemours and Company*—the so-called Cellophane case—351 U. S. 377. That case is the Supreme Court's latest exposition on the subject of the relevant market for Sherman Act consideration. Although the prevailing opinion did not command the assent of a majority of the Court (it being divided 4-3, with two Justices not participating), nevertheless, it is the precedent upon which both sides in this case have relied.

In the Cellophane case, the Court, following earlier precedents, ruled that:

> "a party has monopoly power if it has over 'any part of the trade or commerce among the several States', a power of controlling prices or unreasonably restricting competition. . . . Monopoly power is the power to control prices or exclude competition."

The Supreme Court made clear that *price* and *competition* both must be considered in finding monopoly power. However, the "relevant market" for monopoly power considerations

> "will vary with the part of commerce under consideration. The tests are constant. That market is composed

> of products that have reasonable interchangeability for the purposes for which they are produced—price, use and qualities considered."

This determination, as the Court points out, is basically a factual one, which is resolved by the "varying circumstances of each case." In *DuPont*, the Supreme Court found the defendant's factual argument sustained by the evidence; here we do not.

Cellophane was proved to be but a part of the market for flexible package materials which included other products that had *reasonable interchangeability* for the purposes for which they were produced. The question here comes down to this: Do non-championship boxing bouts, in their promotion and exhibition, including the sale of tickets, television rights, movie rights, radio rights, have a reasonable interchangeability with championship boxing contests both as a financial proposition and as an entertainment media? Based upon the factual findings we have made in this case, it is established that this query must be answered in the negative.

The defendants themselves by concentrating their activities in the sphere of championship fights have recognized the unique qualities of these bouts which generate a special demand for them by boxing enthusiasts. A world championship in any of the recognized classifications is clearly the peak sought by the many boxers in each class. When attained, the champion has an asset which gives him not only the epitome of prestige, but also a most lucrative future so long as he wears the championship crown.

In matters of public appeal as well as financial return, championship contests are on a plane which clearly dis-

tinguishes them from non-championship fights. The great public interest in a championship match was shown to generate a separate and distinct public demand which attracts many spectators who do not patronize non-championship fights.

Defendants do not seriously challenge the financial facts adduced by the Government. The average gross revenue of a championship fight promoted by defendants was almost four times that of an ordinary fight. Breaking down these overall figures, it appears that a championship contest generates three times the television, radio and movie revenues, and five times the box office receipts of non-championship fights.

Qualitatively, a championship boxing bout is so different from a non-championship fight as to establish an identity of the one distinguished from the other. Defendants themselves demonstrated their awareness of this by exacting their contingent exclusive contracts from championship contenders limited to future championship fights. Similarly, championship bouts were treated as outside the agreements with television sponsors for the regular weekly fight series. Indeed, the substantially higher prices paid by such sponsors and broadcasters for the right to broadcast or televise a championship bout is manifest evidence of their special audience appeal, and serves to explain why defendants concentrated their activities in this sphere.

The Court concludes that the promotion of championship boxing contests does constitute a distinct, unique and relevant market for Sherman Act consideration.

The second point urged by defendants is strictly a factual argument to the effect that they have not combined or

conspired in restraint of or to monopolize trade or commerce. Having found the factual allegations of the complaint sustained by the proof submitted on trial, more need not be said here except to observe that the Supreme Court in this case has stated:

> "And the defendants do not deny that the allegations state a cause of action if their business is subject to the Sherman Act." (*United States* v. *International Boxing Club of New York, Inc.*, 348 U. S. 236 at page 240.)

We turn, then, to defendants' final argument that their activities were not engaged in interstate trade or commerce. Based on my factual findings, this contention has been answered with finality by the Supreme Court.

While the business of staging and promoting these championship boxing contests may formerly have been "purely local affairs" (*Federal Club* v. *National League*, 59 U. S. 200, 208 (1921)), modern management has made them vehicles by which television and radio programs may be broadcast and advertising presented with an attractive nationwide appeal. The Government has established, and I have found, that the promotion of professional championship boxing contests was had by the defendants on a multistate basis, and that it was coupled with the sale of rights to televise, broadcast and film the contests for interstate transmission. This, the Supreme Court has held, "constitutes 'trade or commerce among the several states' within the meaning of the Sherman Act" (*United States* v. *International Boxing Club*, 348 U. S. 236, 240). More recently, the Supreme Court in *Radovich* v. *National Football League et al.*, decided February 25, 1957 had occasion to say:

The Law Applicable to the Findings of Fact

> "We did not extend them (the baseball decisions) to boxing or the theatre because we believed that the volume of interstate business in each—the rationale of Federal Baseball—was such that both activities were within the act."

My factual findings here justify and sustain this view.

Defendants seek refuge in the argument that the "far-reaching implications of this case . . . . may well be the opening skirmish of a broad attack upon all professional sports, except organized baseball." The answer to this is two-fold: (1) the promotion of professional championship boxing contests is a pure and simple money-making, profit-seeking business, and (2) the Supreme Court, in the so-called "baseball cases," has never held "that all businesses based on professional sports are outside the scope of the anti-trust laws." *United States* v. *International Boxing Club of N. Y., Inc., supra.* The Supreme Court went on to say:

> "it would be sufficient, we believe, to rest on the allegation that over 25% of the revenue from championship boxing is derived from interstate operations through the sale of radio, television and motion picture rights."

As I have found in the factual findings, the Government has sustained the allegations of the complaint relating to the sale of radio, television and motion picture rights to championship boxing fights. This, the Supreme Court has held, without considering their many other interstate aspects, is sufficient to bring the business of promoting championship boxing contests within the Sherman Act's trade and commerce concept.

4.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the defendants.

2. Beginning sometime in 1949 and continuing thereafter, the defendants have been engaged in a combination and conspiracy in unreasonable restraint of trade and commerce in the promotion of professional world championship boxing contests among the several states of the United States, and were parties to contracts, agreements, arrangements, and understandings in unreasonable restraint of such trade and commerce, all in violation of Section 1 of the Sherman Act.

3. Beginning sometime in 1949 and continuously thereafter, the defendants have been engaged in a combination and conspiracy to monopolize trade and commerce in the promotion of professional world championship boxing contests among the several states of the United States in violation of Section 2 of the Sherman Act.

4. Beginning sometime in 1949 and continuing thereafter, the defendants have been monopolizing trade and commerce in the promotion of professional world championship boxing contests among the several states of the United States in violation of Section 2 of the Sherman Act.

5. The plaintiff is entitled to relief by appropriate decree of this Court.

Conclusions of Law

Proposed decrees may be filed within thirty days from date of the filing of this opinion and thereafter all will be heard on due notice.

Dated, New York, March 8th, 1957.

SYLVESTER J. RYAN
United States District Judge for the Southern District of New York